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# American History Leaflets

COLONIAL AND CONSTITUTIONAL.

EDITED BY

ALBERT BUSHNELL HART AND EDWARD CHANNING,  
OF HARVARD UNIVERSITY.

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NO. 27.

MAY, 1896.

CAPTAIN JOHN SMITH'S  
TRUE RELATION, 1608.

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ALBERT BUSHNELL HART and EDWARD CHANNING,

Of Harvard University.

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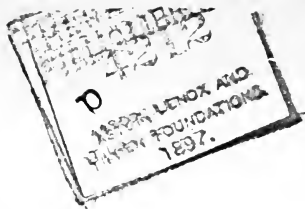
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NO. 27.—MAY, 1896.

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## CAPTAIN JOHN SMITH'S TRUE RELATION, 1608.

Captain John Smith's *True Relation*, which is sometimes cited from its running headline, as *News from Virginia*, is the earliest printed account of the settlement at Jamestown. It appeared at London in black letter in a small quarto in 1608; from a copy of this edition, which is preserved in the Harvard College Library, the present reprint is made. The best edition is that issued with copious notes and introduction by Dr. Charles Deane in 1866. As will be noticed Captain John Smith, in the account of his captivity (pp. 14-17) made no mention of the romantic saving of his life by Pocahontas, Powhatan's daughter. He first told this dramatic incident in his *Generall Historie* which was published in 1624. From this Dr. Deane and many other scholars are inclined to doubt Smith's veracity.

In this edition the spelling, capitalization, and punctuation of the edition of 1608 are preserved except as to the peculiarities of the black letter type and as to the contractions, which are here printed in full. For further information the student should consult Deane's edition of the Relation and Winsor's *America*, III, 153 and 211. The best statement of the case in favor of Smith was made by William Wirt Henry in the *Proceedings* of the Virginia Historical Society for 1882. Other references are given in Channing and Hart's *Guide to the Study of American History*, p. 251.

## CAPTAIN JOHN SMITH'S TRUE RELATION, 1608.

## A

TRUE RELATION OF SUCH OCCURRENCES AND ACCIDENTS OF NOTE, AS HATH HAPNED IN VIRGINIA, SINCE THE FIRST PLANTING OF THAT COLLONY, WHICH IS NOW RESIDENT IN THE SOUTH PART THEREOF, TILL THE LAST RETURNE.

*Kinde Sir, commendations* remembred, &c. You shall understand that after many crosses in the downes by tempests wee arrived safely uppon the Southwest part of the great Canaries: within foure or five daies after we set saile for *Dominica*, the 26. of Aprill: the first land we made, wee fell with Cape *Henry*, the verie mouth of the Bay of *Chissiapacke*, which at that present we little expected, having by a cruell storme bene put to the Northward: anchoring in this Bay twentie or thirtie went a shore with the Captain, and in comming aboard, they were assalted with certaine Indians, which charged them within Pistoll shot: in which conflict, Captaine *Archer* and *Mathew Morton* were shot: wherupon Captaine *Newport* seconding them, made a shot at them, which the Indians little respected, but having spent their arrowes retyred without harme, and in that place was the Box opened, wherein the Counsell for *Virginia* was nominated: and arriving at the place where wee are now seated, the Counsell was sworn, and the President elected, which for that yeare was Maister *Edm. Maria Wingfield*, where was made choice for our scituation, a verie fit place for the erecting of a great cittie, about which some contention passed betwixt Captaine *Wingfield* and Captaine *Gosnold*: notwithstanding all our provision was brought a shore, and with as much speede as might bee wee went about our fortification.

The two and twenty day of Aprill, Captain *Newport* and my selfe with divers others, to the number of twenty two persons, set forward to discover the River, some fiftie or

sixtie miles, finding it in some places broader, and in some narrower, the Countrie (for the moste part) on each side plaine high ground, with many fresh Springes, the people in all places kindly intreating us, daunsing and feasting us with strawberries, Mulberies, Bread, Fish, and other their Countrie provisions wherof we had plenty: for which Captaine *Newport* kindly requited their least favours, with Bels, Pinnes, Needles, beades or Glasses, which so contented them that his liberallitie made them follow us from place to place, and ever kindly to respect us. In the midway staying to refresh our selves in a little Ile foure or five savages came unto us which described unto us the course of the River, and after in our iourney, they often met us, trading with us for such provision as wee had, and ariving at *Arsatecke*, hee whom we supposed to bee the chiefe King of all the rest, moste kindly entertained us, giving us in a guide to go with us up the River to *Powhatan*, of which place their great Emperour taketh his name, where he that they honored for King used us kindly. But to finish this discoverie, we passed on further, where within an ile [a mile?] we were intercepted with great craggy stones in the midst of the river, where the water falleth so rudely, and with such a violence, as not any boat can possibly passe, and so broad disperseth the streame, as there is not past five or sixe Foote at a low water, and to the shore scarce passage with a barge, the water floweth foure foote, and the freshes by reason of the Rockes have left markes of the inundations 8. or 9. foote: The south side is plaine low ground, and the north side high mountaines, the rockes being of a gravelly nature, interlaced with many vains of glistening spangles. That night we returned to *Powhatan*: the next day (being Whitsunday after dinner) we returned to the fals, leaving a mariner in paun with the Indians for a guide of theirs, hee that they honored for King followed us by the river. That afternoone we trifled in looking upon the Rockes and river (further he would not goe) so there we erected a crosse, and that night taking our man at *Powhatans*, Cap. *Newport* congratulated his kindenes with a Gown and a Hatchet: returning to *Arsatecke*, and stayed there the next day to observe the height therof, and so with many signes of love we departed. The next day the

queene of *Agamatack* kindly intreated us, her people being no lesse contented then the rest, and from thence we went to another place (the name whereof I doe not remember) where the people shewed us the manner of their diving for Mussels, in which they finde Pearles.

That night passing by *Weanock* some twentie miles from our Fort, they according to their former churlish condition, seemed little to affect us, but as wee departed and lodged at the point of *Weanocke*, the people the next morning seemed kindly to content us, yet we might perceive many signes of a more Iealousie in them then before, and also the Hinde that the King of *Arsdeck* had given us, altered his resolution in going to our Fort. and with many kinde circumstances left us there. This gave us some occasion to doubt some mischief at the Fort, yet Capt. *Newport* intended to have visited *Paspahagh* and *Tappahanocke*, but the instant change of the winde being faire for our return we repaired to the fort withall speed, where the first we heard was that 400. Indians the day before had assalted the fort, and surprised it, had not God (beyond al their expectations) by meanes of the shippes at whom they shot with their Ordinances and Muskets, caused them to retire, they had entred the fort with our own men, which were then busied in setting Corne, their armes beeing then in driefats and few ready but certain Gentlemen of their own, in which conflict, most of the Counsel was hurt, a boy slaine in the Pinnaes, and thirteene or fourteene more hurt. With all speede we pallisadoed our Fort: (each other day) for sixe or seaven daies we had alarums by-ambuscadoes, and foure or five cruelly wounded by being abroad: the Indians losse wee know not, but as they report three were slain and divers hurt.

Captaine *Newport* having set things in order, set saile for England the 22 of June, leaving provision for 13. or 14 weeks. The day before the Ships departure, the King of *Pamaunke* sent the Indian that had met us before in our discoverie, to assure us peace, our fort being then palisadoed round, and all our men in good health and comfort, albeit, that through some discontented humors, it did not so long continue, for the President and Captaine *Gosnold*, with the rest of the Counsell, being for the moste part discontented with one another in so much, that things were neither carried

with that discretion nor any busines effected in such good sort as wisdom would, nor our owne good, and safetie required, wherby, and through the hard dealing of our President, the rest of the counsell beeing diverslie affected through his audacious commaund, and for Captaine Martin, (albeit verie honest) and wishing the best good, yet so sicke and weake, and my selfe so disgrac'd through others mallice, through which disorder God (being angrie with us) plagued us with such famin and sicknes, that the living were scarce able to bury the dead: our want of sufficient and good victualls, with continuall watching, foure or five each night at three Bulwarkes, being the chiefe cause: onely of Stur-gion wee had great store, whereon our men would so greedily surfet, as it cost manye their lives: the Sack, Aquavitie, and other preservatives for our health, being kept onely in the Presidents hands, for his owne diet, and his few associates: shortly after Captaine *Gosnold* fell sicke, and within three weekes died, Captaine *Ratcliffe* being then also verie sicke and weake, and my selfe having also tasted of the extremitie therof, but by Gods assistance being well recovered. *Kendall* about this time, for divers reasons deposed from being of the Councell: and shortly after it pleased God (in our extremity) to move the Indians to bring us Corne, ere it was halfe ripe, to refresh us, when we rather expected when they would destroy us: about the tenth of September there was about 46. of our men dead, at which time Captaine *Wingsfield* having ordred the affaires in such sort that he was generally hated of all, in which respect with one consent he was deposed from his presidencie, and Captaine *Ratcliffe* according to his course was elected.

Our provision being now within twentie dayes spent, the Indians brought us great store both of Corne and bread ready made: and also there came such abundance of Fowles into the Rivers, as greatly refreshed our weake estates, whereuppon many of our weake men were presently able to goe abroad. As yet we had no houses to cover us, our Tents were rotten, and our Cabbins worse then nought: our best commoditie was Yron which we made into little chissels, the president, and Captaine *Martins* sicknes, constrained me to be Cape Marchant, and yet to spare no paines in making houses for the company, who notwithstanding our



misery, little ceased their mallice, grudging and muttering. As at this time were most of our chiefest men either sicke or discontented, the rest being in such dispaire, as they would rather starve and rot with idlenes, then be perswaded to do any thing for their owne reliefe without constraint : our victualles being now within eighteene dayes spent, and the Indians trade decreasing, I was sent to the mouth of the river, to *Kegquouhtan* an Indian Towne, to trade for Corne, and try the river for Fish, but our fishing we could not effect by reason of the stormy weather. The Indians thinking us neare famished, with carelesse kindnes, offred us little pieces of bread and small handfulls of beanes or wheat, for a hatchet or a piece of copper: In the like maner I entertained their kindnes, and in like scorne offered them like commodities, but the Children, or any that shewed extraordinary kindenes, I liberally contented with free gifte, such trifles as wel contented them finding this colde comfort, I anchored before the Towne, and the next day returned to trade, but God (the absolute disposer of all heartes) altered their conceits, for now they were no lesse desirous of our commodities then we of their Corne: under colour to fetch fresh water, I sent a man to discover the Towne, their Corne, and force, to trie their intent, in that they desired me up to their houses: which well understanding, with foure shot I visited them, with fish, oysters, bread and deere, they kindly traded with me and my men, beeing no lesse in doubt of my intent, then I of theirs, for well I might with twentie men have fraighted a Shippe with Corne: The Towne containeth eighteene houses, pleasantly seated upon three acres of ground, uppon a plaine, halfe invironed with a great Bay of the great River, the other parte with a Baye of the other River falling into the great Baye, with a little Ile fit for a Castle in the mouth thereof, the Towne adioyning to the maine by a necke of Land of sixtie yardes. With sixteene bushells of Corne I returned towards our Forte: by the way I encountred with two Canowes of Indians, who came aboard me, being the inhabitants of *waraskoyack*, a kingdome on the south side of the river, which is in breadth 5. miles and 20 mile or neare from the mouth: with these I traded, who having but their hunting provision, requested me to returne to their Towne, where I should load my boat with

corne, and with near thirtie bushells I returned to the fort, the very name wherof gave great comfort to our desparing company: time thus passing away, and having not above 14. daies vituals left, some motions were made about our presidents and Capt. *Archers* going for England, to procure a supply, in which meane time we had reasonably fitted us with houses, and our President and Capt. *Martin* being able to walk abroad, with much ado it was concluded, that the pinnace and barge should goe towards *Powhatan*, to trade for corne: Lotts were cast who should go in her, the chance was mine, and while she was a rigging, I made a voiage to *Topohanack*, where ariving, there was but certain women and children who fled from their houses, yet at last I drew them to draw neere, truck they durst not, corne they had plenty, and to spoile I had no commission: In my returne to *Paspahegh*, I traded with that churlish and trecherous nation: having loaded 10 or 12 bushels of corne, they offred to take our pieces and swords, yet by stelth, but seeming to dislike it, they were ready to assault us, yet standing upon our guard in coasting the shore, divers out of the woods would meet with us with corn and trade, but least we should be constrained, either to indure overmuch wrong or directly fall to revenge, seeing them dog us, from place to place, it being night, and our necessitie not fit for warres, we tooke occasion to returne with 10 bushells of corne: Cap. *Martin* after made 2 journies to that nation of *Paspahegh* but each time returned with 8. or 10. bushells. All things being now ready for my journey to *Powhatan*, for the performance thereof, I had 8. men and my selfe for the barge, as well for discoverie, as trading, the Pinnace, 5. Marriners, and 2. landmen to take in our ladings at convenient places. The 9 of November I set forward for the discovery of the country of *Chikhamania*, leaving the pinnace the next tide to followe and stay for my comming at *Point weanock*, 20 miles from our fort: the mouth of this river falleth into the great river at *Paspahegh*, 8 miles above our fort: that afternoone I stayed the eb, in the bay of *Paspahegh* with the Indians: towards the evening certaine Indians haled me, one of them being of *Chikahamania*, offred to conduct me to his country, the *Paspaheghians* grudged therat: along we went by moonelight, at midnight he brought us before his Towne, desiring one of our men to

go up with him, whom he kindly entertained, and returned back to the barge: the next morning I went up to the towne, and shewed them what copper and hatchets they shold have for corne, each family seeking to give me most content: so long they caused me to stay that 100 at least was expecting my comming by the river with corne, what I liked I bought, and least they should perceive my too great want I went higher up the river: this place is called *Manosquosick* a quarter of a mile from the river, conteining thirtie or fortie houses, uppon an exceeding high land: at the foote of the hill towards the river, is a plaine wood, watered with many springes, which fall twentie yardes right downe into the river: right against the same is a great marsh, of 4. or 5. miles circuit, devided in 2 Ilands, by the parting of the river, abounding with fish and foule of all sorts: a mile from thence is a Towne called *Oraniocke*, I further discovered the Townes of *Mausa*, *Apahaoek*, *Werawahone*, and *Mamanahunt* at eche place kindly used, especially at the last, being the hart of the Country, where were assembled 200. people with such abundance of corne, as having laded our barge, as also I might have laded a ship: I returned to *Paspahhegh*, and considering the want of Corne at our Fort, it being night, with the ebb, by midnight I arrived at our fort, where I found our Pinnis run aground: the next morning I unladed seaven hogsheds into our store, the next morning I returned againe: the second day I arived at *Mamanahunt*, wher the people having heard of my comming, were ready with 3 or 400. baskets litle and great, of which having laded my barge, with many signes of great kindnes I returned: at my departure they requested me to hear our pieces, being in the midst of the river, which in regard of the eccho seemed a peale of ordnance, many birds and fowles they see us dayly kil that much feared them, so desirous of trade wer they, that they would follow me with their canowes, and for any thing give it me, rather then returne it backe, so I unladed again 7 or 8. hogsheads at our fort. Having thus by Gods assistance gotten good store of corne, notwithstanding some bad spirrits not content with Gods providence, still grew mutinous, in so much, that our president having ocasion to chide the smith for his misdeamenor, he not only gave him bad language, but also offred to strike him with some of his

tooles, for which rebellious act, the smith was by a Iury condemned to be hanged, but being uppon the ladder continuing verry obstinate, as hoping uppon a rescue: when he saw no other way but death with him, he became penitent, and declared a dangerous conspiracy, for which Captaine *Kendall* as principal, was by a Iury condemned and shot to death. This conspiracy appeased, I set forward for the discovery of the River of *Cheeka Hamania*: this third time I discovered the Townes of *Matapamient*, *Morinogh*, *Ascacap*, *moysenock*, *Righkahauck*, *Nechanichock*, *Mattalunt*, *Attamuspincke*, and divers others, their plenty of corne I found decreased, yet lading the barge, I returned to our fort. our store being now indifferently wel provided with corne, there was much adoe for to have the pinace goe for England, against which Captain *Martin* and my selfe, standing chiefly against it, and in fine after many debatings, *pro & contra*, it was resolved to stay a further resolution: this matter also quieted, I set forward to finish this discovery, which as yet I had neglected in regard of the necessitie we had to take in provision whilst it was to be had: 40. miles I passed up the river, which for the most part is a quarter of a mile broad, and 3. fatham and a half deep, exceeding osey, many great low marshes, and many high lands, especially about the midst at a place called *Moysonicke*, a *Peninsule* of 4. miles cicuit, betwixt two rivers ioyned to the main, by a neck of 40. or 50. yards, and 40. or 50 yards from the high water marke: on both sides in the very necke of the maine, are high hills and dales, yet much inhabited, the Ile declining in a plaine fertile corne field, the lower end a lowe marsh, more plentie of swannes, cranes, geese, duckes, and mallards, and divers sorts of fowles none would desire: more plaine fertile planted ground, in such great proportions as there I had not seene, of a light blacke sandy mould, the cliffes commonly red, white and yellowe coloured sand, and under red and white clay, fish great plenty, and people abundance, the most of their inhabitants, in view of the neck of Land, where a better seat for a towne cannot be desired: at the end of forty miles this river invironeth many low Ilands, at each high water drowned for a mile, where it uniteth it selfe, at a place called *Apokant* the highest Towne inhabited. 10. miles higher I discovered with the barge, in the mid way,

a great tree hindred my passage which I cut in two : heere the river became narrower, 8. 9 or 10. foote at a high water, and 6. or 7. at a lowe : the streame exceeding swift, and the bottom hard channell, the ground most part a low plaine, sandy soyle, this occasioned me to suppose it might issue from some lake or some broad ford, for it could not be far to the head, but rather then I would endanger the barge, yet to have beene able to resolve this doubt. and to discharge the imputation of malicious tungs, that halfe suspected I durst not for so long delaying, some of the company as desirous as my self, we resolved to hier a Canow, and returne with the barge to *Apocant*, there to leave the barge secure, and put our selves uppon the adventure : the country onely a vast and wilde wildernes, and but onely that Towne : within three or foure mile we hired a Canow, and 2. Indians to row us the next day a fowling : having made such provision for the barge as was needfull, I left her there to ride, with expresse charge not any to go ashore til my returne. Though some wise men may condemn this too bould attempt of too much indiscretion, yet if they well consider the friendship of the Indians, in conducting me, the desolateness of the country, the probabilitie of some lacke, and the malicious iudges of my actions at home, as also to have some matters of worth to incourage our adventurers in england might well have caused any honest minde to have done the like, as wel for his own discharge as for the publike good : having 2 Indians for my guide and 2 of our own company, I set forward, leaving 7 in the barge : having discovered 20 miles further in this desert, the river stil kept his depth and bredth, but much more comberd with trees : here we went ashore (being some 12 miles higher then the barge had bene) to refresh our selves, during the boyling of our vituals : one of the Indians I tooke with me, to see the nature of the soile, and to crosse the boughts of the river, the other Indian I left with *M Robinson* and *Thomas Emry*, with their matches light and order to discharge a peece, for my retreat at the first sight of any Indian, but within a quarter of an houre I heard a loud cry, and a hollowing of Indians, but no warning peece, supposing them surprised, and that the Indians had betraid us, presently I seized him and bound his arme fast to my hand in a garter, with my pistoll ready bent to be revenged on him : he ad-

vised me to fly, and seemed ignorant of what was done, but as we went discoursing, I was struck with an arrow on the right thigh, but without harme: upon this occasion I espied 2 Indians drawing their bowes, which I prevented in discharging a french pistoll: by that I had charged againe, 3 or 4 more did the like, for the first fell downe and fled: at my discharge they did the like, my hinde I made my barricado who offered not to strive, 20. or 30. arrowes were shot at me but short, 3 or 4 times I had discharged my pistoll ere the king of *Pamaunck* called *Opeckankenough* with 200 men, invironed me, each drawing their bowe, which done they laid them upon the ground, yet without shot, my hinde treated betwixt them and me of conditions of peace, he discovered me to be the Captaine, my request was to retire to the boate, they demaunded my armes, the rest they saide were slaine, onely me they would reserve: the Indian importuned me not to shoot. In retiring being in the midst of a low quagmire, and minding them more then my steps, I stept fast into the quagmire, and also the Indian in drawing me forth: thus surprised, I resolved to trie their mercies, my armes I caste from me, till which none durst approach me: being ceazed on me, they drew me out and led me to the King, I presented him with a compasse diall, describing by my best meanes the use therof, whereat he so amazedly admired, as he suffered me to proceed in a discourse of the roundnes of the earth, the course of the sunne, moone, starres and plannets, with kinde speeches and bread he requited me, conducting me where the Canow lay and *John Robinson* slaine, with 20 or 30. arrowes in him. *Emry* I saw not, I perceived by the abundance of fires all over the woods, at each place I expected when they would execute me, yet they used me with what kindnes they could: approaching their Towne, which was within 6 miles where I was taken, onely made as arbors and covered with mats, which they remove as occasion requires: all the women and children, being advertised of this accident, came foorth to meet them, the King well guarded with 20 bowmen 5 flanck and rear, and each flanck before him a sword and a peece, and after him the like, then a bowman, then I on each hand a boweman, the rest in file in the reare, which reare led foorth amongst the trees in a bishion, each his bowe and a handfull of

arrowes, a quiver at his back grimly painted: on each flank a sargeant, the one running alwaies towards the front, the other towards the reare, each a true pace and in exceeding good order, this being a good time continued, they caste themselves in a ring with a daunce, and so each man departed to his lodging, the Captain conducting me to his lodging, a quarter of Venison and some ten pound of bread I had for supper, what I left was reserved for me, and sent with me to my lodging: each morning 3. women presented me three great platters of fine bread, more venison then ten men could devour I had, my gowne, points and garters, my compass and my tablet they gave me again, though 8 ordinarily guarded me, I wanted not what they could devise to content me: and still our longer acquaintance increased our better affection: much they threatned to assault our forte, as they were solicited by the King of *Paspahagh*, who shewed at our fort great signes of sorrow for this mischance: the King tooke great delight in understanding the manner of our ships, and sayling the seas, the earth and skies and of our God: what he knew of the dominions he spared not to acquaint me with, as of certaine men cloathed at a place called *Ocanahonan*, cloathed like me, the course of our river, and that within 4 or 5 daies journey of the falles, was a great turning of salt water: I desired he would send a messenger to *Paspahagh*, with a letter I would write, by which they shold understand, how kindly they used me, and that I was well, least they should revenge my death: this he granted and sent three men, in such weather, as in reason were unpossible, by any naked to be indured: their cruell mindes towards the fort I had deverted, in describing the ordinance and the mines in the fields, as also the revenge Captain *Newport* would take of them at his returne, their intent, I incerted the fort, the people of *Ocanahonum* and the back sea, this report they after found divers Indians that confirmed: the next day after my letter, came a salvage to my lodging, with his sword to have slaine me, but being by my guard intercepted, with a bowe and arrow he offred to have effected his purpose: the cause I knew not, till the King understanding thereof came and told me of a man a dying, wounded with my pistoll: he tould me also of another I had slayne, yet the most concealed they had any hurte:

this was the father of him I had slayne, whose fury to prevent, the King presently conducted me to another Kingdome, upon the top of the next northerly river, called *Youghtanan*, having feasted me, he further led me to another branch of the river, called *Mattapament*, to two other hunting townes they led me, and to each of these Countries, a house of the great Emperour of *Pewhakan*, whom as yet I supposed to bee at the *Fals*, to him I tolde him I must goe, and so returne to *Paspahegh*, after this foure or five dayes marsh, we returned to *Rasawrack*, the first towne they brought me too, where binding the Mats in bundels, they marched two dayes iourney, and crossed the River of *Youghtanan*, where it was as broad as *Thames*: so conducting me to a place called *Menapacute* in *Pamaunke*, where the King inhabited: the next day another King of that nation called *Kekataugh*, having received some kindnes of me at the Fort, kindly invited me to feast at his house, the people from all places flocked to see me, each shewing to content me. By this, the great King hath foure or five houses, each containing fourescore or an hundred foote in length, pleasantly seated upon an high sandy hill, from whence you may see westerly a goodly low Country, the river before the which his crooked course causeth many great Marshes of exceeding good ground. An hundred houses, and many large plaines are here together inhabited, more abundance of fish and fowle, and a pleasanter seat cannot be imagined: the King with fortie Bowmen to guard me, intreated me to discharge my Pistoll, which they there presented me with a mark at six score to strike therwith but to spoil the practise I broke the cocke, whereat they were much discontented though a chaunce supposed.

From hence this kind King conducted mee to a place called *Topahanocke*, a kingdome upon another River northward: the cause of this was, that the yeare before, a shippe had beene in the River of *Pamaunke*, who having beene kindly entertained by *Powhatan* their Emperour, they returned thence, and discovered the River of *Topahanocke*, where being received with like kindnesse, yet he slue the King, and tooke of his people, and they supposed I were hee, but the people reported him a great man that was Capitaine, and using mee kindly, the next day we departed.



This River of *Topahanock*, seemeth in breadth not much lesse then that we dwell upon. At the mouth of the River is a Countrey called *Cuttata women* upwards is *Marraugh tacum* *Tapohanock*, *Appahatuck*, and *Nautaug tacum*, at *Topmanahocks*, the head issuing from many Mountaines, the next night I lodged at a hunting town of *Powhatams*, and the next day arrived at *Waranacomoco* upon the river of *Pamauncke*, where the great king is resident: by the way we passed by the top of another little river, which is betwixt the two called *Payankatank*. The most of this Countrey though Desert, yet exceeding fertile, good timber, most hills and dales, in each valley a cristall spring.

Arriving at *Weramocomoco* their Emperour, proudly lying upon a Bedstead a foote high upon tenne or twelve Mattes, richly hung with manie Chaynes of great Pearles about his necke, and covered with a great covering of *Rahaughcums*: At heade sat a woman, at his feete another, on each side sitting upon a Matte upon the ground were raunged his chiefe men on each side the fire, tenne in a ranke, and behinde them as many yong women, each a great Chaine of white Beades over their shoulders: their heades painted in redde and with such a grave and Maiesticall countenance, as drave me into admiration to see such state in a naked Salvage, hee kindly welcomed me with good wordes, and great Platters of sundrie Victuals, assuring mee his friendship, and my libertie within foure dayes, hee much delighted in *Opechan Comoughs* relation of what I had described to him, and oft examined me upon the same. Hee asked mee the cause of our coming, I tolde him being in fight with the Spaniards our enemy, beeing overpowred, neare put to retreat, and by extreame weather put to this shore: where landing at *Chesipiack*, the people shot us, but at *Kequoughtan* they kindly used us, we by signes demaunded fresh water, they described us up the River was all fresh water, at *Paspahagh*, also they kindly used us, our Pinnsse being leake wee were inforced to stay to mend her, till Captaine *Newport* my father came to conduct us away. He demaunded why we went further with our Boate, I tolde him, in that I would have occasion to talke of the backe Sea, that on the other side the maine, where was salt water, my father had a childe slaine, whiche wee supposed *Monocan* his enemy, whose death we intended to revenge.

After good deliberation, hee began to describe mee the Countreys beyonde the Falles, with many of the rest, confirming what not onely *Opechancanoyes*, and an *Indian* which had beene prisoner to *Pewhatan* had before tolde mee, but some called it five dayes, some sixe, some eight, where the sayde water dashed amongst many stones and rockes, each storm which caused oft tymes the heade of the River to bee brackish: *Anchanachuck* he described to bee the people that had slaine my brother, whose death hee would revenge. Hee described also upon the same Sea, a mighty Nation called *Pocoughtronack*, a fierce Nation that did eat men, and warred with the people of *Moyaoncer* and *Pataromerke*, Nations upon the toppe of the heade of the Bay, under his territories, where the yeare before they had slain an hundred, he signified their crownes were shaven, long haire in the necke, tied on a knot, Swords like Pollaxes.

Beyond them he described people with short Coates, and Sleeves to the Elbowes, that passed that way in Shippes like ours. Many Kingdomes hee described mee to the heade of the Bay, which seemed to bee a mightie River, issuing from mightie Mountaines betwixt the two Seas, the people cloathed at *Ocamahowan*. He also confirmed, and the Southerly Countries also, as the rest, that reported us to be within a day and a halfe of *Mangoge*, two dayes of *Chawwonock*, 6. from *Roonock*, to the south part of the backe sea: he described a countrie called *Anone*, where they have abundance of Brasse, and houses walled as ours. I requited his discourse, seeing what pride hee had in his great and spacious Dominions, seeing that all hee knewe were under his Territories.

In describing to him the territories of *Europe*, which was subject to our great King whose subject I was, the innumerable multitude of his ships, I gave him to understand the noyse of Trumpets, and terrible manner of fighting were under captain *Newport* my father, whom I intituled the *Meworames* which they call King of all the waters, at his greatnesse he admired, and not a little feared: he desired mee to forsake *Paspahagh*, and to live with him upon his River, a Countrie called *Capa Howasicke*: hee promised to give me Corne, Venison, or what I wanted to feede us, Hatchets and Copper, wee should make him, and none

should disturbe us. This request I promised to performe : and thus having with all the kindnes hee could devise, sought to content me : hee sent me home with 4. men, one that usually carried my Gowne and Knapsacke after me, two other loded with bread, and one to accompanie me.

This River of *Pamaunke* is not past twelve mile from that we dwell on, his course northwest, and westerly, as the other. *Weraocomoco*, is upon salt water, in bredth two myles, and so keepeth his course without any tarrying some twenty miles, where at the parting of the fresh water and the salt, it divideth it selfe into two partes, the one part to *Goughland*, as broad as *Thames*, and navigable, with a Boate threescore or fourescore miles, and with a Shippe fittie, exceeding crooked, and manie low grounds and marishes, but inhabited with aboundance of warlike and tall people. The Countrey of *Youghtomans*, of no lesse worth, onely it is lower, but all the soyle, a fatte, fertill, sandie ground. Above *Manapacumter*, many high sandie Mountaines. By the River is many Rockes, seeming if not of severall Mines: the other branch a little lesse in breadth, yet extendeth not neare so farre, nor so well inhabited, somewhat lower, and a white sandie, and a white clay soyle : here is their best Terra Sigillata : the mouthe of the River, as I see in the discoverie therof with *captain Newport*, is halfe a mile broad, and withlin foure miles not above a Musket shot : the channell exceeding good and deepe, the River straight to the devisions. *Kiskirk* the nearest Nation to the entrances.

Their religion and Ceremonies I observed was thus : three or foure dayes after my taking seven of them in the house where I lay, each with a rattle began at ten a clocke in the morning to sing about the fire, which they invironed with a Circle of meale, and after a foote or two from that, at the end of each song, layde downe two or three graines of wheate, continuing this order till they have included sixe or seven hundred in a halfe Circle, and after that two or three more Circles in like maner, a hand bredth from other : that done, at each song, they put betwixt everie three, two, or five graines, a little sticke, so counting as an old woman her *Pater noster*.

One disguised with a great Skinne, his head hung round with little Skinnes of Weasels, and other vermine, with a Crounet of feathers on his head, painted as ugly as the divell,

at the end of each song will make many signes and demonstrations, with strange and vehement actions, great cakes of Deere suet, Deare, and Tobacco he casteth in the fire, till sixe a clocke in the Evening, their howling would continue ere they would depart. Each morning in the coldest frost, the principall to the number of twentie or thirtie, assembled themselves in a round circle, a good distance from the towne, where they told me they there consulted where to hunt the next day: so fat they fed mee, that I much doubted they intended to have sacrificed mee to the *Quiyoughquosicke*, which is a superiour power they worship, a more uglier thing cannot be described: one they have for chief sacrifices, which also they call *Quiyoughquosick*: to cure the sick, a man with a Rattle, and extreame howling, showting, singing, and such violent gestures, and Anticke actions over the patient will sucke out blood, and flegme from the patient out of their unable stomacke, or any diseased place, as no labour will more tire them, tobacco they offer the water in passing in fowle weather. The death of any the<sup>r</sup> lament with great sorrow and weeping: their Kings they burie betwixt two mattes within their houses, with all his beads, iewels, hatchets, and copper: the other in graves like ours. They acknowledge no resurrection. *Powhatan* hath three brethren, and two sisters, each of his brethren succeeded other.

For the Crowne, their heyres inherite not, but the first heyres of the Sisters, and so successively the weomens heires: For the Kings have as many weomen as they will, his Subjects two, and most but one.

From *Weramocomoco* is but 12. miles, yet the *Indians* trifled away that day, and would not goe to our Forte by any perswasions: but in certaine olde hunting houses of *Paspahagh* we lodged all night. The next morning ere Sunne rise, we set forward for our Fort, where we arrived within an houre, where each man with the truest signes of ioy they could expresse welcomed me, except M Archer, and some 2. or 3. of his, who was then in myabsence, sworne Counsellour, though not with the consent of Captaine *Martin*: great blame and imputation was laide upon mee by them, for the losse of our two men which the *Indians* slew: insomuch that they purposed to depose me, but in the midst of my miseries it pleased God to send *Captaine Newport*, who arriving there the

same night, so tripled our ioy, as for a while these plots against me were deferred, though with much malice against me, which captain *Newport* in short time did plainly see. Now was maister *Scrivener*, capitaine *Martin*, and my selfe, called Counsellers.

Within five or sixe dayes after the arrivall of the Ship, by a mischaunce our Fort was burned, and the most of our apparell, lodging and private provision, many of our old men diseased, and of our new for want of lodging perished. The Emperour *Powhatan* each weeke once or twice sent me many presents of Deare, bread *Raugroughcuns*, halfe always for my father, whom he much desired to see, and halfe for me: and so continually importuned by messengers and presents, that I would come to fetch the corne, and take the Countrey their King had given me, as at last Capitaine *Newport* resolved to go see him. Such acquaintanoe I had amongst the *Indians*, and such confidence they had in me, as neare the Fort they would not come till I came to them, every of them calling me by my name, would not sell any thing till I had first received their presents, and what they had that I liked, they deferred to my discretion: but after acquaintance, they usually came into the Fort at their pleasure: the President, and the rest of the Councell, they knewe not, but Capitaine *Newports* greatnesse I had so described, as they conceived him the chiefe, the rest his children, Officers, and servants. We had agreed with the King of *Paspahugh* to conduct two of our men to a place called *Panawicke* beyond *Roonok*, where he reported many men to be apparelled. Wee landed him at *Warraskoyack*, where playing the villaine, and deluding us for rewards returned within three or foure dayes after without going further. Capitaine *Newport*, maister *Scrivener*, and my selfe found the mouth of *Pamauncks* river, some 25. or 30. miles northward from Cape *Henricke*, the chanell good as before expressed.

Arriving at *Weramocomoca*, being iealous of the intent of this politick salvage, to discover his intent the better, I with 20. shot armed in Jacks went a shore, the Bay where he dwelleth hath in it 3. cricks, and a mile and a halfe from the chanel all ost, being conducted to the towne, I found my selfe mistaken in the creeke, for they al there were within lesse then a mile; the Emperors sonne called *Naukaquawis*, the

captaine that tooke me, and diverse others of his chiefe men conducted me to their kings habitation, but in the mid way I was intercepted by a great creek over which they had made a bridge of grained stakes and railles, the king of *Kiskieck*, and *Namontack*, who all the iourney the king had sent to guide us, had conducted us this passage, which caused me to suspect some mischiefe: the barge I had sent to meet me at the right landing, when I found my selfe first deceyved, and knowing by experience the most of their courages to proceede from others feare, though fewe lyked the passage, I intermingled the Kings sonne, our conductors, and his chiefe men amongst ours, and led forward, leaving halfe at the one ende to make a guard for the passage of the Front. The *Indians* seeing the weakenesse of the Bridge, came with a Canow, and tooke me in of the middest with foure or five more, being landed, wee made a guard for the rest till all were passed, two in a ranke we marched to the Emperors house. Before his house stood fortie or fiftie great Platters of fine bread, being entred the house, with loude tunes they all made signes of great ioy. This proude salvage, having his finest women, and the principall of his chiefe men assembled, sate in rankes as before is expressed, himselfe as upon a Throne at the upper ende of the house, with such a Maiestie as I cannot expresse, nor yet have often seene, either in Pagan or Christian, with a kinde countenance hee bad mee welcome, and caused a place to bee made by himselfe to sit, I presented him a sute of red cloath, a white Greyhound, and a Hatte; as Jewels he esteemed them, and with a great Oration made by three of his Nobles, if there be any amongst Salvages, kindly accepted them, with a publike confirmation of a perpetuall league and friendship.

After that, he commaunded the Queene of *Apamatuc*, a comely yong Salvage, to give me water, a Turkie cocke, and breade to eate: being thus feasted, hee began his discourse to this purpose. Your kinde visitation doth much content mee, but where is your father whom I much desire to see, is he not with you. I told him he remained aboard, but the next day he would come unto him, with a merrie countenance he asked me for certaine peeces which I promised him, when I went to *Paspahagh*, I told according to my promise, that I proffered the man that went with me foure Demy culverings,

in that he so desired a great Gunne, but they refused to take them, whereat with a lowde laughter, he desired to give him some of lesse burthen, as for the other I gave him them, being sure that none could carrie them : but where are these men you promised to come with you, I told him without, who therupon gave order to have them brought in, two after two, ever maintaining the guard without. And as they presented themselves ever with thankes, he would salute me, and caused each of them to have foure or five pound of bread given them. This done, I asked him for the corne and ground he promised me. He told me I should have it, but he expected to have all these men lay their armes at his feet, as did his subiects. I tolde him that was a ceremonie our enemies desired, but never our Friends, as we presented ourselves unto him, yet that he should not doubt of our friendship: the next day my Father would give him a child of his, in full assurance of our loves, and not only that, but when he should thinke it convenient, wee would deliver under his subiection the Country of *Manacam* and *Pocoughaonack* his enemies.

This so contented him, as immediatly with attentive silence, with a lowd oration he proclaimed me *Awerowanes* of *Powhatan*, and that all his subiects should so esteeme us, and no man account us strangers nor Paspabeghans, but Powhatans, and that the Corne, weomen and Country, should be to us as to his owne people: this proffered kindnes for many reasons we contemned not, but with the best Languages and signes of thankes I could expresse, I tooke my leave.

The King rising from his seat, conducted me foorth, and caused each of my men to have as much more bread as hee could beare: giving me some in a basket, and as much he sent a board for a present to my Father: victuals you must know is all there wealth, and the greatest kindnes they could shew us: arriving at the River, the Barge was fallen so low with the ebbe, though I had given order and oft sent to prevent the same, yet the messengers deceived mee, the Skies being very thicke and rainie, the King understanding this mischance, sent his Sonne and *Mamontacke*, to conduct mee to a great house sufficient to lodge mee, where entring I saw it hung round with bowes and arrows.

The Indians used all diligence to make us fires, and give

us content: the kings Orators presently entertained us with a kinde oration, with expresse charge that not any should steale, or take out bowes or arrowes, or offer any injury.

Presently after he sent me a quarter of Venizon to stay my stomacke: in the evening hee sent for mee to come onely with two shot with me: the company I gave order to stand upon their guard, and to maintaine two sentries at the ports all night. To my supper he set before me meate for twenty men, and seeing I could not eate, hee caused it to be given to my men: for this is a generall custome, that what they give, not to take againe, but you must either eate it, give it away, or carry it with you: two or three houres we spent in our aunent discourses, which done, I was with a fire stick lighted to my lodging.

The next day the King conducting mee to the River, shewed me his Canowes, and described unto me how hee sent them over the Baye, for tribute Beades: and also what Countries paide him Beads, Copper or skins. But seeing Captaine *Nuport*, and Maister *Scrivener*, comming a shore, the King returned to his house, and I went to meete him, with a trumpet before him, wee marched to the King: who after his old manner kindly received him, especially a Boy of thirteen yeares old, called *Thomas Salvage*, whom he gave him as his Sonne: he requited this kindnes with each of us a great basket of Beanes, and entertaining him with the former discourse, we passed away that day, and agreed to bargain the next day, and so returned to our Pinnis: the next day comming a shore in like order, the King having kindly entertained us with a breakfast, questioned with us in this manner.

Why we came armed in that sort, seeing hee was our friend, and had neither bowes nor arrowes, what did wee doubt? I told him it was the custome of our Country, not doubting of his kindnes any waies, wherewith though hee seemed satisfied, yet Captaine *Nuport* caused all our men to retire to the water side, which was some thirtie score from thence: but to prevent the worst, Maister *Scrivener* or I were either the one or other by the Barge, experience had well taught me to beleeve his friendship, till convenient opportunity suffered him to betray us, but quickly this polititian had perceived my absence, and cunningly sent for me; I sent for



Maister *Scrivener* to supply my place, the King would demand for him, I would againe releve him, and they sought to satisfie our suspicion with kind Language, and not being agreed to trade for corne, hee desired to see all our Hatchets and Copper together, for which he would give us corne, with that auncient tricke the *Chickahamaniens* had oft acquainted me : his offer I refused, offering first to see what hee would give for one piece, hee seeming to despise the nature of a Merchant, did scorne to sell, but we freely should give him, and he liberally would requite us.

Captaine *Nuport* would not with lesse then twelve great Coppers try his kindnes, which he liberally requited with as much corne as at *Chickahamania*, I had for one of lesse proportion : our Hatchets hee would also have at his owne rate, for which kindnes hee much seemed to affect Captaine *Nuport*, some few bunches of blew Beades I had, which he much desired, and seeing so few, he offred me a basket of two pecks, and that which I drew to be three pecks at the least, and yet seemed contented and desired more : I agreed with him the next day for two bushells, for the ebbe now constrained us to return to our Boate, although he earnestly desired us to stay dinner which was a providing, and being ready he sent aboard after us, which was bread and venizon, sufficient for fiftie or sixtie persons.

The next day hee sent his Sonne in the morning not to bring a shore with us any pieces, least his weomen and children should feare. Captaine *Nuports* good believe would have satisfied that request, yet twentie or thirtie five shot we got a shore : the King importuning mee to leave my armes a board, much misliking my sword, pistol and target, I told him the men that slew my Brother with the like tearmes had perswaded me, and beeing unarmed shot at us, and so be- traide us.

He oft entreated Captaine *Nuport* that his men might leave their armes, which still hee commanded to the water side, this day we spent in trading for blew Beads, and having neare ffrighted our Barge.

Captaine *Nuport* returned with them that came aboard, leaving me and Maister *Scrivener* a shore, to follow in Canowes ; into one I got with sixe of our men, which beeing lanced a stones cast from the shore stuck fast in the Ose :

Master *Scrivener* seeing this example, with seven or eight more passed the dreadfull bridge, thinking to have found deeper water on the other creeke, but they were inforced to stay with such entertainment as a salvage, being forced ashore with wind and raine, having in his Canow, as commonly they have, his house and houshold, instantly set up a house of mats which succoured them from the storme.

The Indians seeing me pestered in the Ose, called to me, six or seven of the Kings chiefe men threw off their skins, and to the middle in Ose, came to bear me out on their heads, their importunacie caused me better to like the Canow then their curtesie, excusing my deniall for feare to fall into the Ose, desiring them to bring me some wood, fire, and mats, to cover me, and I would content them: each presently gave his helpe to satisfie my request, which paines a horse would scarce have indured, yet a couple of bells richly contented them.

The Emperor sent his Seaman *Mantiuas* in the evening with bread and victuall for me and my men, he no more scrupulous then the rest seemed to take a pride in shewing how litle he regarded that miserable cold and durty passage, though a dogge would scarce have indured it, this kindnes I found, when I litle expected lesse then a mischiefe, but the blacke night parting our companies, ere midnight the flood served to carry us aboard, the next day we came ashore, the King with a solemne discourse causing all to depart, but his principall men; and this was the effect, when as hee preceived that we had a desire invade *Monacum*, against whom he was no professed enemy, yet thus farre hee would assist us in this enterprise: First hee would send his spies, perfectly to understand their strength and ability to fight with which he would acquaint us himselfe.

Captaine *Nuport* would not be seene in it himselfe, being great *Werowances*, they would stay at home, but I, Maister *Scrivener*, and two of his Sonnes, and *Opechankanough*. The King of *Pamaunke* should have 100. of his men to goe before as though they were hunting, they giving us notice where was the advantage we should kill them, the weomen and young children he wished we should spare, and bring them to him, only 100 or 150 of our men he held sufficient for this exploit: our boats should stay at the falls, where we

might hew timber, which we might convey each man a piece till we were past the stones, and there ioyned them, to passe our men by water, if any were shot, his men should bring them backe to our boats, this faire tale had almost made Captaine *Nuport* undertake, by this meanes to discover the South sea, which will not be without trecherie, if wee ground our intent upon his constancie.

This day we spent in trading, dancing, and much mirth, the King of *Pamaunke* sent his messenger, as yet not knowing Captaine *Nuport*, to come unto him: who had long expected mee, desiring also my Father to visite him: the messenger stayed to conduct us, but *Powhatan* understanding that we had Hatchets lately come from *Paspahugh*, desired the next day to trade with us, and not to go further.

This new tricke he cunningly put upon him, but onely to have what hee listed, and to try whether we would go or stay. *Opechankoughs* messenger returned that wee would not come: the next day his Daughter came to entreat me, shewing her Father had hurt his legge, and much sorrowed he could not see me.

Captaine *Nuport* being not to bee perswaded to goe in, that *Powhatan* had desired us to stay: sent her away with the like answer, yet the next day upon better consideration intreatie prevailed, and wee anchored at *Cinquateck*, the first twaine above the parting of the river, where dwelled two Kings of *Pamaunke*, Brothers to *Powhatan*; the one called *Opitchapam*, the other *Katatough*, to these I went a shore, who kindly intreated mee and Maister *Scrivener*, sending some presents aboard to Captaine *Nuport*, whilst we were trucking with these Kings.

*Opechankanough* his wife, weomen, and children came to meete me with a naturall kind affection, hee seemed to reioyce to see me.

Captaine *Nuport* came a shore, with many kind discourses wee passed that forenoone: and after dinner, Captaine *Nuport* went about with the Pinnis to *Menapacant* which is twenty miles by water, and not one by land: *Opechankanough*, conducted me and Maister *Scrivener* by land, where having built a feasting house a purpose to entertaine us with a kind Oration, after their manner and his best provision,

kindly welcomed us, that day he would not trucke, but did his best to delight us with content: Captaine *Nuport* arrived towards evening, whom the King presented with sixe great platters of fine bread, and *Pansarowmana*, the next day till noone wee traded: the King feasted all the company, and the after noone was spent in playing, dauncing, and delight, by no meanes hee would have us depart till the next day, he had feasted us with venizon, for which he had sent, having spent his first and second provision in expecting our comming: the next day he performed his promise, giving more to us three, then would have sufficed 30. and in that we carried not away what we left, hee sent it after us to the Pinnis, with what words or signes of love he could expresse, we departed.

Captaine *Nuport* in the Pinnis, leaving mee in the Barge to digge a rocke, where wee supposed a Mine at *Cinquao-teck*, which done, ere midnight I arrived at *Weracomoco*, where our Pinnis anchored, being 20. miles from *Cinquao-tecke*, the next day, we tooke leave of *Powhatan*, who in regard of his kindnes gave him an *Indian*, he well affected to goe with him for England in steed of his Sonne, the cause I assure me was to know our strength and Countries condition: the next day we arrived at *Kiskiack*, the people so scornefully entertained us, as with what signes of scorne and discontent we could, we departed and returned to our Fort with 250. bushells of Corne, our president being not wholly recovered of his sicknes. in discharging, his Piece brake and split his hand off, which he is not yet well recovered.

At Captaine *Nuports* arrivall, wee were victualled for twelve weeks, and having furnished him of what hee thought good, hee set saile for England the tenth of April: Maister *Scrivener* and my selfe with our shallop, accompanied him to Captaine *Hendrick* [*i. e., Cape Henry*].

*Powhatan* having for a farrewell, sent him five or sixe mens loadings, with Turkeyes for swords, which he esent him in our return to the fort: we discovered the river of *Nausamd*, a proud warlike Nation, as well we may testified, at our first arrivall at *Chesiapiack*: but that iniury Captaine *Nuport* well revenged at his returne, where some of them intising him to their Ambuscadoes by a daunce, hee perceiving

their intent, with a volly of musket shot, slew one, and shot one or two more, as themselves confesse. The King at our arrivall sent for me to come unto him: I sent him word what commodities I had to exchange for wheat, and if he would as had the rest of his Neighbours, conclude a Peace, we were contented, at last he came downe before the Boate which rid at anchor some fortie yards from the shore, he signified to me to come a shore, and sent a Canow with foure or five of his men, two whereof I desired to come aboard and to stay, and I would send two to talke with their King a shore, to this hee agreed: the King wee presented with a piece of Copper, which he kindly excepted, and sent for victualls to entertaine the messengers.

Maister *Scrivener* and my selfe also, after that, went a shore: the King kindly feasted us, requesting us to stay to trade till the next day, which having done, we returned to the Fort, this river is a musket shot broad, each side being should bayes, a narrow channell, but three fadom, his course for eighteene miles, almost directly South, and by West, where beginneth the first inhabitants, for a mile it turneth directly East, towards the West, a great bay and a white chaukie Iland, convenient for a Fort: his next course South, where within a quarter of a mile, the river devideth in two, the neck a plaine high Corne field, the wester bought a highe plaine likewise, the Northeast answerable in all respects: in these plaines are planted abundance of houses and people, they may containe 1000. Acres of most excellent fertill ground, so sweete, so pleasant, so beautifull, and so strong a prospect, for an invincible strong City, with so many commodities, that I know as yet I have not seene: This is within one daies journey of *Chawwonocke*, the river falleth into the Kings river, within twelve miles of *Cape-hendicke*.

At our Fort, the tooles we had were so ordinarily stolen by the Indians, as necessity inforced us to correct their braving theeverie: for he that stole to day, durst come againe the next day. One amongst the rest, having stolen two swords, I got the Counsels consent to set in the bilboes: the next day with three more, he came with their woodden swordes in the midst of our men to steale, their custome is to take any thing they can ceaze off, onely the people of *Pamanuke*, wee

have not found stealing: but what others can steale, their King receiveth.

I bad them depart, but flourishing their swords, they seemed to defend what they could catch but out of our hands, his pride urged me to turne him from amongst us, whereat he offered to strike me with his sword, which I prevented, striking him first: the rest offering to revenge the blow, received such an incounter, and fled; the better to affright them, I pursued them with five or sixe shot, and so chased them out of the Iland: the beginning of this broyle, litle expecting by his carriage, we durst have resisted, having even till that present, not beene contradicted, especially them of *Paspalegh*: these Indians within one houre, having by other Salvages, then in the Fort, understood that I threatned to be revenged, came presently of themselves, and fell to working upon our wears, which were then in hand by other Salvages, who seeing their pride so incountred, were so so submissive, and willing to doe any thing as might be, and with trembling feare, desired to be friends within three daies after: From *Nawsamond*, which is 30. miles from us, the King sent us a Hatchet, which they had stollen from us at our being there: the messenger as is the custome, also wee well rewarded and contented.

The twenty of Aprill, being at worke, in hewing downe Trees, and setting Corne, an alarum caused us with all speede to take our armes, each expecting a new assault of the Salvages: but understanding it a Boate under saile, our doubts were presently satisfied, with the happy sight of Maister *Nelson*, his many perrills of extreame stormes and tempests. His ship well, as his company could testifie his care in sparing our provision, was well: but the providence thereof, as also of our stones, Hatchets, and other tooles, onely ours excepted, which of all the rest was most necessary, which might inforce us, to think either a seditious traitor to our action, or a most unconscionable deceiver of our treasures. This happy arrivall of Maister *Nelson* in the *Phenix*, having beene then about three monethes missing, after Captaine *Nuports* arrivall, being to all our expectations lost: albeit, that now at the last, having beene long crossed with tempestuous weather, and contrary winds, his so unexpected comming, did so ravish us with exceeding

ioy, that now we thought our selves as well fitted, as our harts could wish, both with a competent number of men, as also for all other needfull provisions, till a further supply should come unto us: whereupon the first thing that was concluded, was, that my selfe, and Maister *Scrivener*, should with 70. men goe with the best meanes we could provide, to discover beyond the Falls, as in our iudgements conveniently we might: six or seaven daies we spent only in trayning, our men to march, fight, and scirmish in the woods, their willing minds to this action, so quickened their understanding in this exercise, as in all iudgements wee were better able to fight with *Powhatans* whole force: in our order of battle amongst the Trees, (for Thicks there is few) then the Fort was to repulse 400. at the first assault, with some tenne or twenty shot, not knowing what to doe, nor how to use a Piece: our warrant being sealed, Maister *Nelson* refused to assiste us with the voluntary Marriners, and himself as he promised, unlesse we would stand bound to pay the hire for shippe, and Marriners, for the time they stayed: and further there was some controversie, through the diversitie of Contrary opinions, some alleadging, that how profitable, and to what good purpose soever our iourney should portend, yet our commission, commanding no certaine designe, we should be taxed for the most indiscreete men in the world, besides the wrong we should doe to Captaine *Nuport*, to whom only all discoveries did belong, and to no other: the meanes for guides, beside the uncertaine courses of the river, from which we could not erre much, each night would fortifie us in two houres, better then that they first called the Fort, their Townes upon the river, each within one dayes iourney of other, besides our ordinary provision, might well be supposed to adde reliefe: for truck and dealing only, but in love and peace, as with the rest; if they assalted us, their Townes they cannot defend, nor their luggage so convey, that we should not share, but admit the worst, 16. daies provision we had of Cheese Oatmeale and bisket besides our randevous, we could and might have hid in the ground. With sixe men, Captaine *Martin*, would have undertaken it himselfe, leaving the rest to defend the Fort, and plant our Corne; yet no reason could be reason, to proceede forward, though we

were going aboard to set saile: These discontents caused so many doubts to some, and discouragement to others, as our iourney ended: yet some of us procured petitions to set us forward, only with hope of our owne confusions, our next course was to turne husbandmen, to fell Trees and set Corne. Fiftie of our men, we imployed in this service, the rest kept the Fort, to doe the command of the president, and Captaine *Martin*, 30. dayes the ship lay expecting the triall of certain matters, which for some cause I keepe private: The next exploit was an Indian having stolen an Axe, was so pursued by Maister *Scrivener*, and them next him, as he threw it downe, and flying, drew his bow at any that durst incounter him: within foure or five dayes after, Maister *Scrivener* and I, being a litle from the Fort, among the Corne, two Indians, each with a cudgell, and all newly painted with *Terrasigillata*, came circling about mee, as though they would have clubed me like a hare: I knew their faining love is towards me, not without a deadly hatred, but to prevent the worst, I calling maister *Scrivener* retired to the Fort: the Indians seeing mee suspect them, with good tearmes, asked me for some of their men, whom they would beate, and went with me into our Fort, finding one that lay ordinarily with us, only for a spie: they offered to beat him, I in perswading them to forbear, they offered to beginne with me, being now foure for two other arrayed in like manner, came in on the other side the Fort: where-upon I caused to shut the Ports, and apprehend them. The president and Counsell, being presently acquainted, remembering at the first assault, they came in like manner, and never else but against some villanie, concluded to commit them to prison, and expect the event, eight more we ceazed at that present, an houre after came three or foure more strangers, extraordinarily fitted with arrowes, skinnies, and shooting gloves, their iealousie and feare, bewrayed their bad intent, as also their suspitious departure.

The next day came first an Indian, then another as Embassadors for their men, they desired to speake with me, our discourse was, that what Spades, Shovells, swords, or tooles they had stolne, to bring home (if not the next day, they should hang) the next newes was, they had taken two of our men, ranging in the woods, which mischiefe no pun-



ishment will prevent but hanging, and these they would should redeeme their owne 16. or 18. thus braving us to our doores, we desired the president, and Captaine *Martin*, that afternoone to sally upon them, that they might but know, what we durst to do, and at night mand our Barge, and burnt their Townes, and spoiled, and destroyed, what we could, but they brought our men, and freely delivered them; the president released one, the rest we brought well guarded, to Morning and Evening prayers. Our men all in armes, their trembling feare, then caused them to much sorrow, which till then scoffed, and scorned at what we durst doe, the Counsell concluded, that I should terrifie them with some torture, to know if I could know their intent, the next day I bound one in hold, to the main Mast, and presenting sixe Muskets with match in the cockes, forced him to desire life, to answere my demaunds he could not: but one of his *Comorodos* was of the counsell of *Paspahegh*, that could satisfie me: I releasing him out of sight, I affrighted the other, first with the rack, then with Muskets, which seeing, he desired me to stay, and hee would confesse to this execution. Maister *Scrivener* came, his discourse was to this effect, that *Paspahegh*, the *Chickahamania*, *Youghtanum*, *Pamaunka*, *Mattapanient*, and *Kiskiack*. These Nations were altogether a hunting that tooke me, *Paspahegh*, and *Chicahamania*, had intended to surprise us at worke, to have had our tools: *Powhatan*, and al his would seeme friends, till Captaine *Nuports* returne, that he had againe his man, which he called *Namontack*, where with a great feast hee would so enamor Captaine *Nuport* and his men, as they should ceaze on him, and the like traps would be laied for the rest

This trap for our tooles, we suspected the chiefe occasion was foure daies before *Powhatan* had sent the boy he had to us, with many Turkies to Maister *Scrivener*, and mee, understanding I would go up into his Countries to destroy them, and he doubted it the more, in that I so oft practised my men, whose shooting he heard to his owne lodging, that much feared his wives, and children; we sent him word, we intended no such thing, but only to goe to *Powhatan*, to seeke stones to make Hatchets, except his men shot at us, as *Paspahegh* had told us they would, which if they did shoote but one arrowe, we would destroy them, and least this

mischiefe might happen, sent the boy to acquaint him thus much, and request him to send us *Weanock*, one of his subjects for a guide, the boy he returned backe with his Chest, and apparell, which then we had given him, desiring another for him, the cause was, he was practising with the *Chikahamanias*, as the boy suspected some villanie, by their extraordinary resort, and secret conference, from whence they would send him. The boy we keepe, now we would send him many messengers, and presents, the guide we desired he sent us, and withall requested us to returne him, either the boy, or some other, but none he could have, and that day these Indians were apprehended, his sonne with others that had loaded at our Fort, returned, and being out of the Fort, rayled on me, to divers of our men, to be enemies to him, and to the *Chikahamanias*, not long after *Weanock* that had bin with us for our guide, whom wee kept to have conducted us in another iourney, with a false excuse returned, and secretly after him, *Amocis* the *Paspahayan*, who alwaies they kept amongst us for a spie, whom the better to avoide suspition, presently after they came to beate away: these presumptions induced me to take any occasion, not onely to try the honesty of *Amocis*, the spie, but also the meaning of these cunning trickes of their Emperour of *Powhatan*; whose true meaning Captaine *Martin* most confidently pleaded.

The confession of *Macanoe*, which was the counsellor of *Paspahagh*; first I, then, Maister *Scrivener*, upon their severall examinations, found by them all confirmed, that *Paspahagh*, and *Chickahammania* did hate us, and intended some mischiefe, and who they were that tooke me, the names of them that stole our tooles, and swords, and that *Powhatan* received them, they all agreed: certaine vollies of shot we caused to be discharged, which caused each other to thinke that their fellowes had beene slaine.

*Powhatan* understanding we detained certaine Salvages, sent his Daughter, a child of tenne yeares old, which not only for feature, countenance, and proportion, much exceedeth any of the rest of his people, but for wit, and spirit, the only *Nonpariel* of his Country: this hee sent by his most trustie messenger, called *Rawhunt*, as much exceeding in deformitie of person, but of a subtile wit, and crafty understanding,

he with a long circumstance, told mee, how well *Powhatan*, loved and respected mee, and in that I should not doubt any way of his kindnesse, he had sent his child, which he most esteemed, to see me, a Deere, and bread, besides for a present: desiring me that the Boy might come againe, which he loved exceedingly, his litle Daughter hee had taught this lesson also: not taking notice at all of the Indeans that had beene prisoners three daies, till that morning that she saw their fathers and friends come quickly, and in good tearmes to entreate their libertie.

*Opechankanough*, sent also unto us, that for his sake, we would release two that were his friends, and for a token sent me his shooting Glove, and Bracer, which the day our men was taken upon, separating himselfe from the rest a long time, intreated to speak with me, where in token of peace, he had preferred me the same: now all of them having found their peremptorie conditions, but to increase our malice, which they seeing us begin to threaten to destroy them, as familiarly as before, without suspition, or feare, came amongst us, to begge libertie for their men: In the afternoon they being gone, we guarded them as before to the Church, and after prayer, gave them to *Pocahuntas*, the Kings Daughter, in regard of her fathers kindnesse in sending her: after having well fed them, as all the time of their imprisonment, we gave them their bowes, arrowes, or what else they had, and with much content, sent them packing: *Pocahuntas*, also we requited, with such trifles as conteuted her, to tel that we had used the *Paspaheyans* very kindly in so releasing them. The next day we had suspicion of some other practise for an Ambuscado, but perfectly wee could not discover it, two daies after a *Paspaheyan*, came to shew us a glistening Minerall stone: and with signes demonstrating it to be in great abundance, like unto Rockes, with some dozen more, I was sent to seeke to digge some quantitie, and the Indean to conduct me: but suspecting this some trick to delude us, for to get some Copper of us, or with some ambuscado to betray us, seeing him falter in his tale, beeing two miles on our way, led him ashore, where abusing us from place to place, and so seeking either to have drawne us with him into the woods, or to have given us the slippe: I shewed him Copper, which I promised to have given him, if he had performed his promise, but for

his scoffing and abusing us, I gave twentie lashes with a Rope, and his bowes and arrowes, bidding him shoote if he durst, and so let him goe.

In all this time, our men being all or the most part well recovered, and we not willing to trifle away more time then necessitie enforced us unto, we thought good for the better content of the adventurers, in some reasonable sort to freight home Maister *Nelson* with Cedar wood, about which, our men going with willing minds, was in very good time effected, and the ship sent for England; wee now remaining being in good health, all our men wel contented, free from mutinies, in love one with another, and as we hope in a continuall peace with the Indians, where we doubt not but by God's gracious assistance, and the adventurers willing minds, and speedie furtherance to so honorable an action in after times, to see our Nation to enioy a Country, not onely exceeding pieasant for habitation, but also very profitable for comerce in generall, no doubt pleasing to almightie God, honourable to our gracious Sovereigne, and commodious generally to the whole Kingdome

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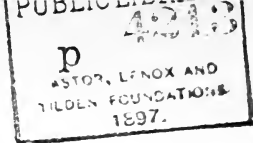
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# American History Leaflets.

COLONIAL AND CONSTITUTIONAL.

No. 28.—July, 1896.

## PROPOSALS TO AMEND THE ARTICLES OF CONFEDERATION.

1781-1789.

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Many misconceptions as to the process of framing the Constitution in 1787, arise out of a want of knowledge of the preliminary work of discussion and specific suggestions. The Articles of Confederation went into effect March 1, 1781, (see the brief account prefixed to *American History Leaflets*, No. 20); but at that time Congress had already discerned the imperfection of the constitution thus to be established, and had on February 1, 1781, submitted an amendment, the so-called "Five per cent. scheme." Upon the failure to receive the necessary unanimous ratification, it was followed by another formal amendment, the "Revenue Plan, April 18, 1783." This also failed, and a third plan, the Commerce Amendment, was the last resort. When this also was lost, it became evident that a convention was the only body capable of framing amendments which would command the attention of the country.

Meanwhile, both in and out of Congress suggestions abounded that

Congress submit additional amendments, or that somehow the framework and powers of government be altered. Hamilton and Madison both vainly set their shoulders to the wheel; and both had a later opportunity, in the Federal Convention, to make their ideas effective. The pamphlets of Pelatiah Webster and Noah Webster reflect the intelligent criticism which came from out-of-doors.

The sources from which these documents have been taken are indicated at the foot of each. The three amendments which received the approval of Congress have been copied by one of the editors from the manuscript records in the State Department, in which most of the other documents here printed are likewise lodged. The text of the Articles of Confederation and the Constitution, between which several of these documents are a kind of bridge, are in *American History Leaflets*, Nos. 20 and 8. The principal secondary authorities are George T. Curtis, *History of the Constitution of the United States*, 2 vols. (reprinted as Vol. I. of his *Constitutional History of the United States*); George Bancroft, *History of the Formation of the Constitution*, 2 vols., with Appendices (reprinted without the Appendices of documents as, *History of the United States [Author's last revision] VI*); Timothy Pitkin, *Political and Civil History of the United States*, II. The period is also covered, with less attention to constitutional development, by J. B. McMaster, *History of the People of the United States*, I; John Fiske, *Critical Period of American History*; Richard Hildreth, *History of the United States*, III. Special information may be found in the biographies and works of Washington, Hamilton, Madison (especially Gilpin, *Madison Papers*), Jefferson, Patrick Henry, Franklin, Gerry, John Jay, and Samuel Adams. A classified bibliography of the period is in Channing and Hart, *Guide to the Study of American History*, §§ 145-151.

### I—1781, Feb. 3. Five per-cent. Amendment.

[Submitted by Congress to the States: failed, 12 ratifications to 1.]

Resolved that it be recommended to the several States as indispensibly necessary, that they vest a power in Congress to levy for the use of the United States a duty of five per cent advalorem at the time and place of importation upon all goods wares and merchandizes of foreign growth and manufactures which may be imported into any of the said States from any foreign port Island or plantation after the first day of May 1781, except arms ammunition cloathing & other articles imported on account of the United States or any of them; and except wool cards & cotton cards & wire for making them, and also except salt during the war.—

Also a like duty of five per cent on all prizes and prize goods condemned in the court of Admiralty of any of these States as lawful prize.

That the monies arising from the said duties be appropriated to the discharge of the principal & interest of the debts already contracted or which may be contracted on the faith of the United States for supporting the present war.—

That the said duties be continued until the said debts shall be fully & finally discharged.—*Manuscript Journal of Congress*, Vol. 30.

## 2—1781, March 16. Madison's Report on Coercion.

[Reported by Madison from a Committee, March 16; Congress on May 2 sent the report to a Grand Committee. (See the next section)].

Whereas it is stipulated and declared in the 13th Article of the Confederation, "that every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them: and that the Articles of this Confederation shall be inviolably observed by every State;" by which Article a general and implied power is vested in the United States in Congress assembled, to enforce and carry into effect all the Articles of the said Confederation against any of the States which shall refuse or neglect to abide by such their determinations, or shall otherwise violate any of the articles; but no determinate and particular provision is made for that purpose; And whereas the want of such provision may be a pretext to call into question the legality of such measures as may be necessary for preserving the authority of the Confederation, and for doing justice to the States which shall duly fulfil their federal engagements; and it is, moreover, most consonant to the spirit of a free Constitution, that, on the one hand, all exercise of power should be explicitly and precisely warranted, and, on the other, that the penal consequences of a violation of duty should be clearly promulgated and understood: And whereas it is further declared by the said 13th Article of the Confederation, that no addition shall be made to the articles thereof, unless the same shall be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State: the United States in Congress assembled, having seriously and maturely deliberated on these considerations, and being desirous as far as possible to cement and invigorate the Federal union, that it may be both established on the most im-

mutable basis, and be the more effectual for securing the immediate object of it, do hereby agree and recommend to the Legislatures of every State, to confirm and to authorize their Delegates in Congress to subscribe the following clause as an additional article to the thirteen Articles of Confederation and perpetual union :

It is understood and hereby declared, that in case any one or more of the confederated States shall refuse or neglect to abide by the determinations of the United States in Congress assembled, and to observe all the Articles of Confederation as required by the 13th Article, the said United States in Congress assembled, are fully authorized to employ the force of the United States, as well by sea as by land, to compel such State or States to fulfil their federal engagements ; and particularly to make restraint on any of the effects, vessels, and merchandizes of such State or States, or any of the citizens thereof, wherever found, and to prohibit and prevent their trade and intercourse as well with any other of the United States and the citizens thereof, as with any foreign State, and as well by land as by sea, until full compensation or compliance be obtained with respect to all requisitions made by the United States in Congress assembled, in pursuance of the Articles of Confederation.

And it is understood, and is hereby agreed, that this Article shall be binding on all the States not actually in possession of the enemy, as soon as the same shall be acceded to and duly ratified by each of the said States.— Henry D. Gilpin, *Papers of James Madison*, I., 88-90.

### 3—1781, Aug. 22. Randolph's Report on Powers of Congress.

[Madison's proposition of March 12 was referred to a Grand Committee, May 2 ; by them reported July 20, and at their recommendation, a new Special Committee of three was constituted ; which on August 22 reported as follows:]

Report of Mr. Randolph, Mr. Ellsworth, Mr. Varnum, committee to prepare an exposition of the confederation, a plan for its complete execution, and supplemental articles, delivered 22 Aug., 1781.

The committee appointed to prepare an exposition of the

confederation, a plan for its complete execution and supplemental articles, report: That they ought to be discharged from the exposition of the confederation because such a comment would be voluminous if co-extensive with the subject. The omission to enumerate any congressional powers would become an argument against their existence, and it will be early enough to insist upon them when they shall be exercised and disputed.

They farther report that the confederation requires execution in the following manner:

1. By adjusting the mode and proportions of the militia aid to be furnished to a sister state laboring under invasion.

2. By describing the privileges and immunities to which the citizens of one state are entitled in another.

3. By setting forth the conditions upon which a criminal is to be delivered up by one state upon the demand of the executive of another.

4. By declaring the method of exemplifying records and the operation of the acts and judicial proceedings of the courts of one state, contravening those of the states in which they are asserted.

5. By a form to be observed in the notification of the appointment or suspension of delegates.

6. By an oath to be taken by every delegate against secret trusts of salaries.

7. By specifying the privileges of delegates from arrests, imprisonment, questioning for free speech and debates in congress, saving as well their amenability to their constituents as protesting against the authority of individual legislatures to absolve them from obligations to secrecy.

8. By instituting an oath to be taken by the officers of the United States or any of them against presents, emoluments, office or title of any kind from a king, prince, or foreign state.

9. By one universal plan of equipping, training, and governing the militia.

10. By a scheme for estimating the value of all land within each state granted to or surveyed for any person or persons, together with the buildings and improvements thereon: and the appointment of certain periods at which payment shall be made.



11. By establishing rules for captures on land and the distribution of the sales.

12. By ascertaining the jurisdiction of congress in territorial questions.

13. By erecting a mint.

14. By fixing a standard of weights and measures throughout the United States.

15. By appointing a committee for Indian affairs.

16. By regulating the post-office.

17. By establishing a census of white inhabitants in each state.

18. By publishing the Journal of Congress monthly.

19. By registering seamen.

20. By liquidation of old accounts against the United States; and

21. By providing means of animadverting on delinquent states.

Resolved, That of the preceding articles, the 9th be referred to the Board of War, the 13th, 14th, and 16th to the Superintendent of Finance, and the others to a committee in order that the subject matter thereof may be extended in detail for the consideration of congress.

And your committee further report, That as America became a confederate republic to crush the present and future foes of her independence;

As of this republic a general council is a necessary organ;

And without the extension of its power in the cases hereinafter enumerated war may receive a fatal inclination and peace be exposed to daily convulsions:

It be resolved to recommend to the several states to authorize your the United States in Congress assembled—

1. To lay embargoes in time of war without any limitation.

2. To prescribe rules for impressing property into the service of the United States during the present war.

3. To appoint the collectors of and direct the mode of accounting for taxes imposed according to the requisitions of congress.

4. To recognise the independence of and admit into the federal union any part of one or more of the United States with the consent of the dismembered state.

5. To stipulate in treaties with foreign nations for the establishment of consular power, without reference to the states individually.

6. To distrain the property of a state delinquent in its assigned proportion of men and money.

7. To vary the rules of suffrage in congress, taking care that in questions for waging war, granting letters of marque and reprisal in time of peace, concluding or giving instructions for any alliance, coining money, regulating the value of coin, determining the total number of land and sea forces, and allotting to each state its quota of men or money, emitting bills of credit, borrowing money, fixing the number and force of vessels of war, and appointing a commander-in-chief of the army and navy—at least two-thirds of the United States shall agree therein.

Resolved, that a committee be appointed to prepare a representation to the several states of the necessity of these supplemental powers, and of pursuing, in the modification thereof, one uniform plan.—George Bancroft, *History of the Formation of the Constitution*, I., App., 286-288.

#### 4—1783, Feb. 26. Pelatiah Webster's Scheme.

.....A number of sovereign States uniting into one Commonwealth, and appointing a supreme power to manage the affairs of the union, *do necessarily and unavoidably part with and transfer over to such supreme power, so much of their own sovereignty, as is necessary to render the ends of the union effectual*, otherwise their confederation will be an union without bands of union, like a cask without hoops, that may and probably will fall to pieces, as soon as it is put to any exercise which requires strength.

In like manner, every member of civil society parts with many of his natural rights, that he may enjoy the rest in greater security under the protection of society.

The UNION of the Thirteen States of *America* is of mighty consequence to the *security, sovereignty, and even liberty* of each of them; *united* under a natural, well-adjusted, and effectual constitution, they are a strong, rich, growing power, with great resources and means of defence, which no foreign power will easily attempt to invade or insult; they may easily command respect.....

I BEGIN with my first and great principle, viz: *That the constitution must vest powers in every department sufficient to secure and make effectual the ends of it.* The supreme authority must have the power of *making war and peace*—of *appointing armies and navies*—of *appointing officers both civil and military*—of *making contracts*—of *emitting, coining and borrowing money*—of *regulating trade*—of *making treaties with foreign powers*—of *establishing post offices*—and in short of *doing everything* which the *well-being* of the Commonwealth may require, and which is *not compatible* to any particular State, all of which require money, and cannot possibly be made effectual without it.

*They must therefore of necessity be vested with a power of taxation.* I know this is a most important and weighty trust, a dreadful engine of oppression, tyranny, and injury, when ill-used; yet, from *the necessity of the case*, it must be admitted.

For to give a supreme authority a power of *making contracts*, without any power of *payment*—of *appointing officers*, civil and military, without money to *pay* them—a power to *build ships*, without *any money* to do it with—a power of *emitting money*, without any power to *redeem* it—or of *borrowing money*, without any power to make *payment*, &c. &c. such solecisms in government, are so nugatory and absurd, that I really think to offer further arguments on the subject, would be to insult the understanding of my readers.....

That the supreme authority should be vested with powers to *terminate* and *finally decide controversies arising between different States*, I take it, will be universally admitted, but I humbly apprehend that an *appeal* from the first instance of trial ought to be admitted in causes of great moment, on the same reason that such appeals are admitted in all the States of *Europe*. It is well known to all men versed in Courts, that the first hearing of a cause, rather gives an opening to that evidence and reason which ought to decide it, than such a full examination and thorough discussion, as should always precede a final judgment, in causes of national consequence.—A detail of reasons might be added, which I deem it unnecessary to enlarge on here.

The supreme authority ought to have a power of *peace and war*, and forming *treaties* and *alliances* with all foreign powers;

which implies a necessity of their also having sufficient powers to *enforce the obedience* of all subjects of the United States to such treaties and alliances ; with *full power to unite the force* of the States ; and direct its operations in war ; and to punish all transgressors in all these respects ; otherwise, by the imprudence of *a few*, the whole Commonwealth may be embroiled with foreign powers, and the operations of war may be rendered useless, or fail much of their due effect.

All these I conceive will be easily granted, especially the latter, as the power of Congress to appoint and direct the army and navy in war, with all departments thereto belonging, and punishing delinquents in them all, is already admitted into practice in the course of the present unhappy war, in which we have been long engaged.

But now the *great and most difficult* part of this weighty subject remains to be considered, viz. how *these supreme powers are to be constituted in such manner that they may be able to exercise with full force and effect*, the vast authorities committed to them, for the *good and well-being* of the United States, and yet be *so checked and restrained* from exercising them to the *injury and ruin* of the States, that we may *with safety* trust them with a commission of such vast magnitude ; —and may *Almighty wisdom direct my pen* in this arduous discussion,.....

2. That the *Congress shall consist of two chambers*, an *upper* and *lower* house, or *senate and commons*, with the *concurrence of both necessary to every act* ; and that every State send one or more delegates to each House : this will subject every act to *two* discussions before *two distinct* chambers of men equally *qualified* for the debate, equally *masters* of the subject, and of equal *authority* in the decision.....

The greatest care and wisdom is therefore requisite to give them the best and surest information, and of that kind that may be the most safely relied on, to prevent their being deluded or prejudiced by partial representations, made by interested men who have particular views.

This *information* may perhaps be best made by the *great ministers of state*, who ought to be men of the *greatest abilities and integrity* ; their business is confined to their several departments, and their attention engaged strongly and constantly to all the several parts of the same ; the whole

arrangement, method, and order of which, are formed, superintended, and managed in their offices, and all information relative to their departments centre there.

These *ministers* will of course have the best information, and most perfect knowledge, of the state of the Nation, as far as it relates to their several departments, and will of course be able to give the *best information* to Congress, in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole.

The *Financier* manages the whole subject of *revenues* and *expenditures*—the *Secretary of State* takes knowledge of the general policy and *internal* government—the *minister of war* presides in the whole business of *war* and *defence*—and the *minister of foreign affairs* regards the whole state of the nation, as it stands related to, or connected with, all foreign powers.

I mention a *Secretary of State*, because all other nations have one, and I suppose we shall need one as much as they, and the multiplicity of affairs which naturally fall into his office will grow so fast, that I imagine we shall soon be under the necessity of appointing one.

To these I would add *Judges of Law*, and *Chancery*; but I fear they will not be very soon appointed—the one supposes the existence of *law*, and the other of *equity*—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both these, we shall probably appoint proper heads to preside in those departments—I would therefore propose,.....

5. I further propose, that no grant of money whatever shall be made, without *an appropriation*, and that *rigid penalties* (no matter how great, in my opinion the halter would be mild enough) shall be inflicted on any person, however august his station, who should *give order, or vote for* the payment, or actually pay one shilling of such money to any *other purpose than that of its appropriation*, and that no order whatever of any superior in office shall justify such payment, but every order shall express what funds it is drawn upon, and what appropriation it is to be charged to, or the order shall not be paid.....

6. I would further propose, that the aforesaid *great minis-*

*ters of state shall compose a Council of State, to whose number Congress may add three others, viz. one from New England, one from the middle States, and one from the southern States, one of which to be appointed President by Congress; to all of whom shall be committed the supreme executive authority of the States (all and singular of them ever accountable to Congress) who shall superintend all the executive departments, and appoint all executive officers, who shall ever be accountable to, and removable for just cause by, them or Congress, i. e., either of them.*

7. I propose further, that the powers of Congress, and all the other departments acting under them, shall all be *restricted to such matters only of general necessity and utility to all the States, as cannot come within the jurisdiction of any particular State is not competent*: so that each particular State shall enjoy all sovereignty and supreme authority to all intents and purposes, excepting only those high authorities and powers by them delegated to Congress, for the purposes of the general union.....

*No laws of any State whatever, which do not carry in them a force which extends to their effectual and final execution, can afford a certain or sufficient security to the subject: this is too plain to need any proof.....*

I therefore propose, that every *person* whatever, whether in *public* or *private* character, who shall, by *public* vote or other overt act, disobey the supreme authority, shall be amendable to Congress, shall be summoned and compelled to appear before Congress, and, on due conviction, suffer such fine, imprisonment, or other punishment as the supreme authority shall judge requisite.

I propose that any State may petition Congress to repeal any law or decision which they have made, and if *more than half the States* do this, the law or decision shall be repealed, let its nature or importance be however great, excepting only such acts as *create funds for the public credit*.....

Further I propose, that if the *execution of any act or order of the supreme authority shall be opposed by force in any of the states* (which God forbid!) it shall be lawful for Congress to send into such state a *sufficient force to suppress it*.....

—Pelatiah Webster, *A Dissertation on the Political Union and Constitution of the Thirteen United States*, 200-225 passim.

### 5—1783, April 18. Revenue Amendment.

[Submitted by Congress to the States : Failed, 12 ratifications to 1.]

Resolved by nine States That it be recommended to the several States as indispensibly necessary to the restoration of public credit, and to the punctual & honorable discharge of the public debts to invest the United States in Congress Assembled with a power to levy for the use of the United States the following duties upon goods imported into the said States from any foreign port Island or plantation.

Upon all rum of Jamaica proof per Gallon,	4/90	of a dol.
Upon all other Spirituous liquors	3/90	do
Upon Madeira Wine	12/90	do
Upon all other wines	6/90	do
Upon Common bohea tea per pound	6/90	do
Upon all other teas	24/90	do
Upon Pepper per pound	3/90	do
Upon brown sugar per pound	1-2/90	do
Upon loaf sugar	2/90	do
Upon all other Sugars	1/90	do
Upon Molasses per Gallon	1/90	do
Upon Cocoa & Coffee per pound	1/90	do

Upon all other Goods a duty of five per Cent advalorem at the time & Place of importation. Provided that None of the said duties shall be applied to any other purpose than the discharge of the Interest or principal of the debts contracted on the faith of the United States for supporting the war, agreeably to the resolution of the 16th day of December last, nor be continued for a longer term than twenty five years; and provided that the Collectors of the said duties shall be appointed by the States within which their Offices are to be respectively exercised, but when so appointed shall be amenable to & removable by the United States in Congress assembled, alone; and in case any State shall not make such appointment within One month after notice given for that purpose the appointment may be made by the United States in Congress assembled.—

That it be further recommended to the several States to establish for a term limited to twenty five years, and to appropriate to the discharge of the Interest and principal of the debts contracted on the faith of the United States for

supporting the war, substantial & effectual revenues of such nature as they may judge most convenient for supplying their respective Porportions of One million five hundred thousand dollars annually, exclusive of the aforementioned duties, which porportion shall be fixed & equalized from time to time, according to the rule which is or may be prescribed by the articles of Confederation; and in case the revenues established by any State, shall at any time yield a sum exceeding its actual proportion the excess shall be refunded to it; and in case the revenues of any State shall be found to be deficient, the immediate deficiency shall be made up by such State with as little delay as possible, and a future deficiency guarded against, by an enlargement of the revenue established; Provided that until the rule of the Confederation can be carried into practice the Proportion of the said 1,500,000 dollars shall be as follows, viz—

New Hampshire,	52.709	
Massachusetts,	224.427	
Rhode Island,	32.313	
Connecticut,	132.091	
New York,	129.243	
New Jersey,	93.350	
Pensylvania,	205.199	
Delaware,	22.443	
Maryland,	141.517	
Virginia,	256.497	
North Carolina,	109.006	
South Carolina,	96.193	
Georgia,	16.030	1,500,000 Dolls.

The said last mentioned revenues to be collected by persons appointed as aforesaid, but to be carried to the separate credit of the States within which they shall be collected:—

That an annual account of the proceeds & application of all the aforementioned revenues, shall be made out & transmitted to the several States distinguishing the proceeds of each of the specified articles and the amount of the whole revenue received from each State; together with the allowances made to the several Officers employed in the Collection of the said revenues.—



That none of the preceding resolutions shall take effect until all of them shall be acceded to by every State, after which unanimous accession, however, they shall be considered as forming a mutual compact among all the States and shall be irrevocable by any one or more of them without the concurrence of the whole, or of a majority of the United States in Congress assembled :—

That as a further mean as well of hastening the extinguishment of the debts, as of establishing the harmony of the United States, it be recommended to the States which have passed no acts towards complying with the resolution of Congress of the 6th of September & 10th of October 1780, relative to the cession of territorial claims, to make the liberal cessions therein recommended, and to the States which may have passed acts complying with the said resolutions in part only, to revise & compleat such compliance.—

That as a more convenient and certain rule of ascertaining the proportions to be supplied by the States respectively to the common Treasury the following alterations in the articles of Confederation and perpetual union between these States be and the same is hereby agreed to in Congress and the several States are advised to authorise their respective delegates to subscribe & ratify the same as part of the said Instrument of Union, in the words following, to wit,

So much of the Eighth of the articles of confederation & perpetual Union between the thirteen States of America, as is contained in the words following, to wit, “All charges of war & all other expences that shall be incurred for the common defence or general Welfare & allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each State granted to or surveyed for any Person, as such land and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct & appoint,” is hereby revoked & made void; and in place thereof it is declared & concluded, the same having been agreed to in a Congress of the United States that “all charges of war and all other expences that have been or shall be incurred for the common defence or general wel-

fare, and allowed by the United States in Congress assembled, except so far as shall be otherwise provided for, shall be defrayed out of a common treasury which shall be supplied the several States in Proportion to the whole number of white and other free citizens & Inhabitants of every age, sex, & condition, including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes in each state, which numbers shall be triennially taken and transmitted to the United States in Congress assembled in such mode as they shall direct and appoint." —*Manuscript Journal of Congress*, Vol. 35.

### 6—1783, June 3. Hamilton's Resolutions for a General Convention.

[These resolutions are endorsed: "Intended to be submitted to Congress, but abandoned for want of support."]

Whereas, in the opinion of this Congress, the Confederation of the United States is defective in the following essential points, to wit:

*Firstly*, and generally: In confining the power of the Federal Government within too narrow limits; withholding from it that efficacious authority and influence, in all matters of general concern, which are indispensable to the harmony and welfare of the whole; embarrassing general provisions by unnecessary details and inconvenient exceptions incompatible with their nature, tending only to create jealousies and disputes respecting the proper bounds of the authority of the United States, and of that of the particular States, and a mutual interference of the one with the other. -

*Secondly*: In confounding legislative and executive powers in a single body: as, that of determining on the number and quantity of force, land and naval, to be employed for the common defence, and of directing their operations when raised and equipped, with that of ascertaining and making requisitions for the necessary sums or quantities of money to be paid by the respective States into the common treasury; contrary to the most approved and well-founded maxims of free government, which require that the legislative,

executive, and judicial authorities should be deposited in distinct and separate hands.

*Thirdly* : In want of a Federal Judicature, having cognizance of all matters of general concern in the last resort, especially those in which foreign nations and their subjects are interested : from which defect, by the interference of the local regulations of particular States militating directly or indirectly against the powers vested in the union, the national treaties will be liable to be infringed, the national faith to be violated, and the public tranquillity to be disturbed.

*Fourthly* : In vesting the United States in Congress assembled with the *power of general taxation*, comprehended in that of "ascertaining the necessary sums of money to be raised for the common defence, and of appropriating and applying the same, for defraying the public expenses," and yet rendering that power, so essential to the existence of the Union, nugatory, by withholding from them all control over either the imposition or the collection of the taxes for raising the sums required ; whence it happens that the inclinations, not the abilities, of the respective States are, in fact, the criterion of their contributions to the common expense ; and the public burden has fallen, and will continue to fall, with very unequal weight.

*Fifthly* : In fixing a rule for determining the proportion of each State towards the common expense, which, if practicable at all, must, in the execution, be attended with great expense, inequality, uncertainty, and difficulty.

*Sixthly* : In authorizing Congress "to borrow money, or emit bills on the credit of the United States," without the power of establishing funds to secure the repayment of the money borrowed, or the redemption of the bills emitted ; from which must result one of these evils : Either a want of sufficient credit, in the first instance, to borrow, or to circulate the bills emitted, whereby in great national exigencies, the public safety may be endangered ; or, in the second instance, frequent infractions of the public engagements, disappointments to lenders, repetitions of the calamities of depreciated paper, a continuance of the injustice and mischiefs of an unfunded debt, and, first or last, the annihilation of public credit.

Indeed, in authorizing Congress at all to emit an *unfunded*

paper as the sign of value, a resource which, though useful in the infancy of this country, and indispensable in the commencement of the revolution, ought not to continue a formal part of the Constitution, nor ever, hereafter, to be employed, being, in its nature, pregnant with abuses, and liable to be made the engine of imposition and fraud, holding out temptations equally pernicious to the integrity of government and to the morals of the people.

*Seventhly:* In not making proper or competent provisions for interior or exterior defence. For interior defence, by leaving it to the individual states to appoint all regimental officers of the land-forces; to raise the men in their own way; to clothe, arm, and equip them at the expense of the United States; from which circumstances have resulted, and will hereafter result, great confusion in the military department; continual disputes of rank; languid and disproportionate levies of men; an enormous increase of expense, for want of system and uniformity in the manner of conducting them, and from the competitions of State bounties; by an ambiguity in the fourth clause of the sixth article, susceptible of a construction which would devolve upon the particular States in time of peace the care of their own defence, both by sea and land, and would preclude the United States from raising a single regiment, or building a single ship, before a declaration of war or an actual commencement of hostilities,—a principle dangerous to the Confederacy in different respects, by leaving the United States at all times unprepared for the defence of their common rights, obliging them to begin to raise an army and to build and equip a navy at the moment they would have occasion to employ them, and by putting into the hands of a few States, who, from their local situations, are more immediately exposed, all the standing forces of the country; thereby, not only leaving the care of the safety of the whole to a part which will naturally be both unwilling and unable to make effectual provision at its particular expense, but also furnishing grounds of jealousy and distrust between the states; unjust, in its operation to those States in whose hands they are, by throwing the exclusive burthen of maintaining those forces upon them, while their neighbors, immediately, and all the states ultimately, would share the benefits of their services.

For exterior defence, in authorizing Congress to "build and equip a navy" without providing any means of manning it, either by requisitions of the States, by the power of registering and draughting the seamen in rotation, or by embargoes in cases of emergency to induce them to accept employment on board the ships of war; the omission of all of which, leaves no other resource than voluntary enlistment,—a resource which has been found ineffectual in every country, and, for reasons of peculiar force, in this.

*Eighthly:* In not vesting in the United States, a general superintendence of trade, equally necessary in view of revenue and regulation. Of revenue because duties on commerce, when moderate, are one of the most agreeable and productive species of it; which cannot, without great disadvantages, be imposed by particular States while others refrain from doing it, but must be imposed in concert, and by laws operating upon the same principles, at the same moment, in all the States, otherwise those States which should not impose them would engross the commerce of such of their neighbors as did. Of regulation, because by general prohibitions of particular articles, by a judicious arrangement of duties, sometimes by bounties on the manufacture or exportation of certain commodities, injurious branches of commerce might be discouraged, favorable branches encouraged, useful products and manufactures promoted, none of which advantages can be as effectually attained by separate regulations, without a general superintending power; because, also, it is essential to the due observance of the commercial stipulations of the United States with foreign powers, an interference with which will be unavoidable if the different States have the exclusive regulation of their own trade, and, of course, the construction of the treaties entered into.

*Ninthly:* In defeating essential powers by provisions and limitations inconsistent with their nature, as the power of making treaties with foreign nations, "*provided* that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the importation or exportation of any species of goods or commodities

whatsoever;" a proviso, susceptible of an interpretation which includes a constitutional possibility of defeating the treaties of commerce entered into by the United States. As also the power "of regulating the trade and managing all affairs with the Indians, not members of any of the States, *provided* that the legislative right of any State within its own limits, be not infringed or violated;" and others of a similar nature.

*Tenthly*: In granting the United States the sole power "of regulating the alloy and value of coin struck by their own authority or by that of the respective States," without the power of regulating the foreign coin in circulation; though the one is essential to the due exercise of the other, as there ought to be such proportions maintained, between the national and foreign coin as will give the former preference in all internal negotiations; and without the latter power the operations of government, in a matter of primary importance to the commerce and finances of the United States, will be exposed to numberless obstructions.

*Eleventhly*: In requiring the assent of *nine* States to matters of principal importance, and of seven to all others, except adjournments from day to day; a rule destructive of vigor, consistency, or expedition in the administration of affairs; tending to subject the sense of the majority to that of the minority, by putting it in the power of a small combination to retard, and even to frustrate, the most necessary measures; and to oblige the greater number, in cases which require speedy determinations, as happens in the most interesting concerns of the community, to come into the views of the smaller; the evils of which have been felt in critical conjunctures, and must always make the spirit of government a spirit of compromise and expedient rather than of system and energy.

*Twelfthly*: In vesting in the Federal Government the sole direction of the interests of the United States, in their intercourse with foreign nations, without empowering it to pass all general laws in aid and support of the laws of nations; for the want of which authority the faith of the United States may be broken, their reputation sullied, and their peace interrupted by the negligence or misconception of any particular State. . . . —Alexander Hamilton, *Works*, (H. C. Lodge's Edition), I., 288-295.

## 7—1784, April 30. Commerce Amendment.

[Submitted by Congress to the States; Failed—Two ratifications in favor.]

The trust reposed in Congress renders it their duty to be attentive to the conduct of foreign nations and to prevent or restrain as far as may be all such proceedings as might prove injurious to the United States. The situation of Commerce at this time claims the attention of the several states, and few objects of greater importance can present themselves to their Notice. The fortune of every Citizen is interested in the success thereof; for it is the constant source of wealth and incentive to industry; and the value of our produce and our land must ever rise or fall in proportion to the prosperous or adverse state of trade.

Already has Great Britain adopted regulations destructive of our commerce with her West India islands. There was reason to expect that measures so unequal and so little calculated to promote mercantile intercourse would not be persevered in by an enlightened nation. But these measures are growing into system. It would be the duty of Congress as it is their wish to meet the attempts of Great Britain with similar restrictions on her commerce; but their powers on this head are not explicit, and the propositions made by the legislatures of the several states render it necessary to take the general sense of the Union on this subject.

Unless the United States in Congress assembled shall be vested with powers competent to the protection of commerce, they can never command reciprocal advantages in trade; and without these our foreign commerce must decline & eventually be annihilated; Hence it is necessary that the States shall be explicit and fix on some effectual mode by which foreign commerce not founded on principles of equality may be restrained

That the United States may be enabled to secure such terms they have

Resolved, That it be and it hereby is recommended to the legislatures of the several States to vest the United States in Congress assembled for the term of fifteen years with power to prohibit any goods wares or merchandize from being imported into or exported from any of the States in

vessels belonging to or navigated by the subjects of any power with whom these States shall not have formed treaties of Commerce

Resolved That it be and it hereby is recommended to the legislatures of the several states to vest the United States in Congress assembled for the term of fifteen years with the power of prohibiting the subjects of any foreign State Kingdom or empire, unless authorized by treaty, from importing into the United States any goods wares or merchandize which are not the produce or manufacture of the dominion of the sovereign whose subjects they are.

Provided That to all acts of the United States in Congress assembled in pursuance of the above powers the assent of nine states shall be necessary—*Manuscript Journal of Congress*, Vol. 36.

## 8—1785. Noah Webster's Suggestions.

Plan of Policy for improving the Advantages and perpetuating the Union of the American States.....

In the first place, there must be a supreme power at the head of the union, vested with authority to make laws that respect the states in general and to compel obedience to these laws. Such a power must exist in every society or no man is safe.....

There must be a supreme head, clothed with the same power to make and enforce laws, respecting the general policy of all the states, as the legislatures of the respective states have to make laws binding on those states, respecting their own internal police. The truth of this is taught by the principles of government, and confirmed by the experience of America. Without such a head, the States cannot be *united*; and all attempts to conduct the measures of the continent, will prove but governmental farces. So long as any individual state has power to defeat the measures of the other twelve, our pretended union is but a name, and our confederation, a cobweb.....

Let a similar system of government be extended to the United States. As towns and cities are, as to their small matters, sovereign and independent, and as to their general concerns, mere subjects of the state; so let the several states,



as to their own police, be sovereign and independent, but as to the common concerns of all, let them be mere subjects of the federal head. If the necessity of a union is admitted, such a system is the only means of effecting it. However independent each state may be and ought to be in things that relate to itself merely, yet as a part of a greater body, it must be a subject of that body, in matters that relate to the whole.....

The general concerns of the continent may be reduced to a few heads; but in all the affairs that respect the whole, Congress must have the same power to enact laws and compel obedience throughout the continent, as the legislatures of the several states have in their respective jurisdictions. If Congress have any power, they must have the whole power of the continent. Such a power would not abridge the sovereignty of each state in any article relating to its own government. The internal police of each state would be still under the sole superintendence of its legislature.....

The confederation has sketched out a most excellent form of continental government. The ninth article recites the powers of Congress, which are perhaps nearly sufficient to answer the ends of our union, were there any method of enforcing their resolutions. It is there said what powers shall be exercised by Congress, but no penalty is annexed to disobedience. What purpose would the laws of a state answer, if they might be evaded with impunity? and if there were no penalty annexed to a breach of them? A law without a penalty is mere *advice*; a magistrate without the power of punishment is a *cypher*. Here is the *great defect* in the articles of our federal government. Unless Congress can be vested with the same authority to compel obedience to their resolutions, that a legislature in any state has to enforce obedience to the laws of that state, the existence of such a body is entirely needless and will not be of long duration. I repeat what I have before said. The idea of governing thirteen states and uniting their interests by mere *resolves* and *recommendations*, without any penalty annexed to a non-compliance, is a ridiculous farce, a burlesque on government, and a reproach to America.

Let Congress be empowered to call forth the force of the continent, if necessary, to carry into effect those measures

which they have a right to frame. Let the president be, *ex officio*, supreme magistrate, clothed with authority to execute the laws of Congress, in the same manner as the governors of the states, are to execute the laws of the states. Let the superintendent of finance have the power of receiving the public monies and issuing warrants for collection, in the manner the treasurer has, in Connecticut. Let every executive officer have power to enforce the laws, which fall within his province. At the same time, let them be accountable for their administration. Let penalties be annexed to every species of male-administration and exacted with such rigour as is due to justice and the public safety. In short, let the whole system of legislation, be the peculiar right of the delegates in Congress, who are always under the control of the people; and let the whole administration be vested in magistrates, as few as possible in number, and subject to the control of Congress only. Let every precaution be used in *framing* laws, but let no part of the subjects be able to resist the execution. Let the people keep, and *forever keep*, the sole right of legislation in their own representatives; but divest themselves wholly of any right to the administration. Let every state reserve its sovereign right of directing its own internal affairs; but give to Congress the sole right of conducting the general affairs of the continent. Such a plan of government is practicable; and I believe, the only plan that will preserve the faith, the dignity and the union of these American states.

I shall just hint several other matters, that may serve, in a more remote manner, to confirm the union of these states.

Education or a general diffusion of knowledge among all classes of men, is an article that deserves peculiar attention.....

Next to the removal of local prejudices, the annihilation of local interests between the states deserves their consideration. Each state wishes to enrich itself as much as possible; but it never ought to be done at the expense of a neighbour. All imposts and duties upon goods purchased of one state by another or carried in a port of another state either by necessity or accident, are the effect of narrow views, and of selfish, unsociable, ungenerous principles, that degrade any state where they operate. The states may lay

what duties they please upon foreigners—this is no more than honest—but they ought to consider their several interests as one—they ought to encourage the commerce of each other—they ought to promote such an intercourse as will conciliate rather than alienate each other's affections. . . . .  
 . . . . .Not only should the states avoid wringing property from each other by duties on articles of commerce ; but also an extention of territory in such a manner as to create reciprocal jealousies. . . . .

The abolition of slavery is a matter intimately connected with the policy of these states. The northern states would hardly feel such an event—the southern would at present suffer by it most sensibly. But slavery ought to be viewed as to its present tendency and remote consequences. At present it is the bane of industry and virtue. . . . .

An uniformity in the general principles of each constitution, deserves attention. Some defects may be found in all : I will mention but one, which is not common to all ; the exclusion of clergymen from all civil offices. . . . .  
 Our union is so feeble, that no provision is made for discharging our debts. France calls for interest and that seriously. Our credit, our faith solemnly pledged, is at stake. Unless we constitute a power at the head of the states, sufficient to compel them to act in concert, I now predict not only a dissolution of our federal connection, but a rupture with our national creditors. A war in Europe may possibly suspend this event ; but it must certainly take place, unless we sacrifice our jealousy to our true interest.

*Three things* demand our early and careful attention ; a general diffusion of knowledge ; the encouragement of industry, frugality and virtue ; and a sovereign power at the head of the states. *All* are essential to our peace and prosperity ; but on an energetic continental government principally depend our tranquility at home and our respectability among foreign nations. . . . .—Noah Webster, Jr., *Sketches of American Policy*, 30–48 passim.

## 9—1785, March 28. Monroe's Proposal on Commerce.

[This proposition was introduced by Monroe, as printed below, on a date not determinable ; it was then on March 28 referred by Congress to a Committee of which Monroe was chairman ; and was discussed in Congress July 13-14, but no action was taken.]

*" The Committee, to whom was referred the motion of Mr. Monroe, submit the following Report :*

"That the first paragraph of the ninth of the articles of confederation be altered so as to read thus, viz :

"The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in cases mentioned in the sixth article ; of sending and receiving ambassadors, entering into treaties and alliances ; of regulating the trade of the States, as well with foreign nations, as with each other, and of laying such imposts and duties upon imports and exports, as may be necessary for the purpose ; (provided, that the citizens of the States shall in no instance be subjected to pay higher imposts and duties, than those imposed on the subjects of foreign powers ; provided, also, that the legislative power of the several States shall not be restrained from prohibiting the importation or exportation of any species of goods or commodities whatsoever ; provided, also, that all such duties as may be imposed, shall be collected under the authority and accrue to the use of the state, in which the same shall be payable ; and provided lastly, that every act of Congress for the above purpose, shall have the assent of nine States in Congress assembled ;) of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated ; of granting letters of marque and reprisal in time of peace, appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures ; provided that no member of Congress shall be appointed judge of any of the said courts."—Washington, *Writings*, (Spark's Edition) IX., 503.

**10—1786, Aug. 14. Report on Trade and Revenue.**

[Reported by a Grand Committee at the instance of Pinckney. Congress took no final action.]

.....*Resolved*, That it be recommended to the legislatures of the several states to adopt the following articles as articles of the confederation, and to authorize their delegates in congress to sign and ratify the same severally as they shall be adopted, to wit :

ART. 14. The United States in congress assembled shall have the sole and exclusive power of regulating the trade of the states as well with foreign nations as with each other, and of laying such prohibitions, and such imposts and duties upon imports and exports, as may be necessary for the purpose ; provided the citizens of the states shall in no instance be subjected to .pay higher duties and imposts than those imposed on the subjects of foreign powers ; provided, also, that all such duties as may be imposed shall be collected under such regulations as the United States in congress assembled shall establish consistent with the constitutions of the states respectively, and to accrue to the use of the state in which the same shall be payable ; provided, also, that the legislative power of the several states shall not be restrained from laying embargoes in times of scarcity ; and provided, lastly, that every act of congress for the above purpose shall have the assent of nine states in congress assembled, and in that proportion when there shall be more than thirteen in the union.

ART. 15. That the respective states may be induced to perform the several duties mutually and solemnly agreed to be performed by their federal compact, and to prevent unreasonable delays in any state in furnishing her just proportion of the common charges of the union when called upon, and those essential evils which have heretofore often arisen to the confederacy from such delays, it is agreed that whenever a requisition shall be made by congress upon the several states on the principles of the confederation for their quotas of the common charges or land forces of the union, congress shall fix the proper periods when the states shall pass legislative acts complying therewith, and give full and complete effect to the same ; and if any state shall neglect

seasonably to pass such acts, such state shall be charged with an additional sum to her quota called for from the time she may be required to pay or furnish the same, which additional sum or charge shall be at the rate of ten per cent per annum on her said quota, and if the requisition shall be for land forces, and any state shall neglect to furnish her quota in time, the average expense of such quota shall be ascertained by congress, and such state shall be charged therewith, or with the average expense of what she may be deficient; and in addition thereto, from the time her forces were required to be ready to act in the field, with a farther sum, which sum shall be at the rate of twelve per cent per annum on the amount of such expense.

ART. 16. And that the resources of any state which may be negligent in furnishing her just proportion of the common expense of the union may in a reasonable time be applied, it is further agreed that if any state shall so neglect as aforesaid to pass laws in compliance with the said requisition, and to adopt measures to give the same full effect for the space of ten months, and it shall then or afterward be found that a majority of the states have passed such laws and adopted such measures, the United States in congress assembled shall have full power and authority to levy, assess, and collect all sums and duties with which any such state so neglecting to comply with the requisition may stand charged on the same by the laws and rules by which the last state tax next preceding such requisition in such state was levied, assessed, and collected, to apportion the sum so required on the towns or counties in such states, to order the sums so apportioned to be assessed by the assessors of such last state tax, and the said assessments to be committed to the collectors of the same last state tax, to collect and to make return of such assessments and commitments to the treasurer of the United States, who by himself or his deputy when directed by congress shall have power to recover the moneys of such collectors for the use of the United States in the same manner and under the same penalties as state taxes are recovered and collected by the treasurers of the respective states; and the several towns or counties respectively shall be responsible for the conduct of said assessors and collectors; and in case there shall be any vacancy in any of said offices of

assessors or collectors by death, removal, refusal to serve, resignation, or otherwise, then other fit persons shall be chosen to fill such vacancies in the usual manner in such town or county within twenty days after notice of the assessment ; and in case any towns or counties, any assessors, collectors, or sheriffs, shall neglect or refuse to do their duty, congress shall have the same rights and powers to compel them, that the state may have in assessing and collecting state taxes.

And if any state by any legislative act shall prevent or delay the due collection of said sums as aforesaid, congress shall have full power and authority to appoint assessors and collectors thereof, and sheriffs to enforce the collections under the warrants of distress issued by the treasurer of the United States ; and if any further opposition shall be made to such collections by the state or the citizens thereof, and their conduct not disapproved of by the state, such conduct on the part of the state shall be considered as an open violation of the federal compact.

ART. 17. And any state which from time to time shall be found in her payments on any requisition in advance on an average of the payments made by the states shall be allowed an interest of        per cent per annum on her said advanced sums or expenses, and the state which from time to time shall be found in arrears on the principles aforesaid shall be charged with an interest of        per cent per annum on the sums in which she may be so in arrears.

ART. 18. In case it shall hereafter be found necessary by congress to establish any new systems of revenue and to make any new regulations in the finances of the United States for a limited term not exceeding fifteen years in their operation, for supplying the common treasury with moneys for defraying all charges of war and all other expenses that shall be incurred for the common defence or general welfare, and such new systems or regulations shall be agreed to and adopted by the United States in congress assembled and afterward be confirmed by the legislatures of eleven states, and in that proportion when there shall be more than thirteen states in the union, the same shall become binding on all the states as fully as if the legislatures of all the states should confirm the same.

ART. 19. The United States in congress assembled shall have the sole and exclusive power of declaring what offences against the United States shall be deemed treason and what offences against the same misprision of treason, and what offences shall be deemed piracy or felonies on the high seas, and to annex suitable punishments to all the offences aforesaid respectively, and power to institute a federal judicial court for trying and punishing all officers appointed by congress for all crimes, offences, and misbehavior in their offices, and to which court an appeal shall be allowed from the judicial courts of the several states in all causes wherein questions shall arise on the meaning and construction of treaties entered into by the United States with any foreign power, or on the law of nations, or wherein any question shall arise respecting any regulations that may hereafter be made by congress relative to trade and commerce, or the collection of federal revenues pursuant to powers that shall be vested in that body, or wherein questions of importance may arise, and the United States shall be a party, provided that the trial of the fact by jury shall ever be held sacred, and also the benefits of the writ of *habeas corpus*; provided, also, that no member of congress or officer holding any other office under the United States shall be a judge of said court, and the said court shall consist of seven judges, to be appointed from the different parts of the union, to wit, one from New Hampshire, Rhode Island, and Connecticut, one from Massachusetts, one from New York and New Jersey, one from Pennsylvania, one from Delaware and Maryland, one from Virginia, and one from North Carolina, South Carolina, and Georgia, and four of whom shall be a quorum to do business.

ART. 20. That due attention may be given to the affairs of the union early in the federal year, and the sessions of congress made as short as conveniently may be, each state shall elect her delegates annually before the first of July, and make it their duty to give an answer before the first of September in every year whether they accept their appointments or not, and make effectual provision for filling the places of those who may decline, before the first of October yearly, and to transmit to congress by the tenth of the same month the names of the delegates who shall be appointed and accept their appointments; and it shall be the indispensable



duty of delegates to make a representation of their state in congress on the first Monday in November annually ; and if any delegate or delegates, when required by congress to attend so far as may be necessary to keep up a representation of each state in congress, or having taken his or their seat, shall withdraw without leave of congress, unless recalled by the state, he or they shall be proceeded against as congress shall direct, provided no punishment shall be further extended than to disqualifications any longer to be members of congress or to hold any office of trust or profit under the United States or any individual state ; and the several states shall adopt regulations effectual to the attainment of the ends of this article.—George Bancroft, *History of the Formation of the Constitution*, II., 374-377.

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NO. 29.

SEPTEMBER, 1896.

EXTRACTS FROM BRADFORD'S HISTORY OF  
PLYMOUTH PLANTATION.

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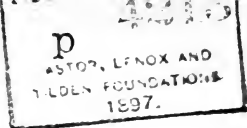
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# American History Leaflets.

## COLONIAL AND CONSTITUTIONAL.

No. 28.—July, 1896.

### PROPOSALS TO AMEND THE ARTICLES OF CONFEDERATION.

1781-1789.

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4. 1783, Feb. 16. *Pelotiah Webster's Scheme.*
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7. 1784, April 30. *Commerce Amendment.*
8. 1785. *Noah Webster's Suggestions.*
9. " Mch. 28. *Monroe's Proposal on Commerce.*
10. 1786, August. *Report on Trade and Revenue.*

Many misconceptions as to the process of framing the Constitution in 1787, arise out of a want of knowledge of the preliminary work of discussion and specific suggestions. The Articles of Confederation went into effect March 1, 1781, (see the brief account prefixed to *American History Leaflets*, No. 20); but at that time Congress had already discerned the imperfection of the constitution thus to be established, and had on February 1, 1781, submitted an amendment, the so-called "Five per cent. scheme." Upon the failure to receive the necessary unanimous ratification, it was followed by another formal amendment, the "Revenue Plan, April 18, 1783." This also failed, and a third plan, the Commerce Amendment, was the last resort. When this also was lost, it became evident that a convention was the only body capable of framing amendments which would command the attention of the country.

Meanwhile, both in and out of Congress suggestions abounded that

Congress submit additional amendments, or that somehow the framework and powers of government be altered. Hamilton and Madison both vainly set their shoulders to the wheel; and both had a later opportunity, in the Federal Convention, to make their ideas effective. The pamphlets of Pelatiah Webster and Noah Webster reflect the intelligent criticism which came from out-of-doors.

The sources from which these documents have been taken are indicated at the foot of each. The three amendments which received the approval of Congress have been copied by one of the editors from the manuscript records in the State Department, in which most of the other documents here printed are likewise lodged. The text of the Articles of Confederation and the Constitution, between which several of these documents are a kind of bridge, are in *American History Leaflets*, Nos. 20 and 8. The principal secondary authorities are George T. Curtis, *History of the Constitution of the United States*, 2 vols. (reprinted as Vol. 1. of his *Constitutional History of the United States*); George Bancroft, *History of the Formation of the Constitution*, 2 vols., with Appendices (reprinted without the Appendices of documents as, *History of the United States [Author's last revision] VI*); Timothy Pitkin, *Political and Civil History of the United States*, II. The period is also covered, with less attention to constitutional development, by J. B. McMaster, *History of the People of the United States*, I; John Fiske, *Critical Period of American History*; Richard Hildreth, *History of the United States*, III. Special information may be found in the biographies and works of Washington, Hamilton, Madison (especially Gilpin, *Madison Papers*), Jefferson, Patrick Henry, Franklin, Gerry, John Jay, and Samuel Adams. A classified bibliography of the period is in Channing and Hart, *Guide to the Study of American History*, §§ 147-151.

### I—1781, Feb. 3. Five per-cent. Amendment.

[Submitted by Congress to the States: failed, 12 ratifications to 1.]

Resolved that it be recommended to the several States as indispensibly necessary, that they vest a power in Congress to levy for the use of the United States a duty of five per cent advalorem at the time and place of importation upon all goods wares and merchandizes of foreign growth and manufactures which may be imported into any of the said States from any foreign port Island or plantation after the first day of May 1781, except arms ammunition cloathing & other articles imported on account of the United States or any of them; and except wool cards & cotton cards & wire for making them, and also except salt during the war.—

Also a like duty of five per cent on all prizes and prize goods condemned in the court of Admiralty of any of these States as lawful prize.

after they had continued together aboute a year, and kept their meetings euery Saboth, in one place, or other, exercising the worship of God amongst them selues, notwithstandinge all ye dilligence & malice of their aduerssaries; they seeing they could no longer continue in yt condition, they resolved to get ouer into Holland as they could. Which was in ye year 1607. & 1608. of which more at large in ye next chap

2 CHAP.

Of their departure into Holland and their troubles ther aboute. with some of ye many difficulties they found and mete with all.

Ano 1608.

Being thus constrained to leaue their natie soyle and Countrie, their Lands & Liuinges, and all their freinds & famillier acquaintance, it was much; and thought maruelous by many. But to goe into a cuntrie they knew not (but by hearsay) wher they must learne a new language, and get their livings they knew not how, It being a dear place, & subjecte to ye miseries of warr, It was by many thought an aduenture almost desperate, a case Intolerable, & a misserie worse then death. Espetially seeing they were not acquainted with trades, nor traffique (by which yt countrie doth subsiste) but had only been vsed to a plaine countrie life, & ye Inocente trade of husbandrey. But these things did not dismay them (though they did some times trouble them) for their desires were sett on the ye ways of god, & to Injoye his ordinances, but they rested on his prouidence, & knew whom they had beleued. yet this was not all, for though they could not stay, yet were ye not suffered to goe, but ye ports & hauens were shut against them; so as they were faine to seeke secrete means of conueance, & to bribe, & fee ye mariners, & giue extraordinarie rates for their passages. And yet were they off[en] times betrayed (many of them) and both they, & their goods Intercepted & surprised, and therby put to great trouble, & charge, of which I will giue an Instance, or tow, & omitte the rest.

Ther was a large companie of them purposed to get passage at Boston in Lincoln-shire, and for that end; had

hired a shipe wholly to them selues ; & made agreement with the maister to be ready at a certaine day, and take them, and their goods in, at a conueniente place, wher they accordingly would all attende in readines. so after long waiting, & large expences (though he kepte not day with them) yet he came at length, & tooke them in, In ye night. But when he had them, & their goods aboard ; he betrayed them haueing before hand plotted with ye Serchers, & other officers so to doe. Who tooke them, and put them into open boats, & ther rifled and ransaked them, searching them to their shirts for money, yea euen ye women furdur then became modestie ; and then caried them back into ye towne, & made them a Spectackle, & wonder to ye multitude ; which came flocking on all sids to behould them. Being thus first, by the chatchpoule officers, rifled, & stripte of their money, books, & much other goods ; they were presented to ye majestrats and messengers sente to Informe ye lords of ye counsell of them ; and so they were comited to ward. Indeed ye majestrats used them courteously, & shewed them what fauour they could ; but could not deliver them, till order came from ye counsell-table. But ye Issue was that after a months Imprisonmente, ye greatest parte were dismist, & sent to ye places from whence they came ; but .7. of ye principall were still kept in prison, and bound ouer to ye Assises.

The nexte spring after, ther was another attempte made by some of these & others ; to get ouer at an other place. And it so fell out, that they light of a Dutchman at Hull, hauing a ship of his owne belonging to Zealand ; they made agreeemente with him, and aquainted him with their condition, hoping to find more faithfullne[s] in him, then in ye former of their owne nation ; he bad them not fear, for he would doe well enough. He was (by appointment) to take them in betweene Grimsbe, & Hull, wher was a large commone a good way distante from any towne. Now aganst the prefixed time, the women, & children, with ye goods, were sent to ye place in a small barke, which they had hired for yt end ; and ye men were to meete them by Land. But it so fell out, that they were ther a day before ye shipe came, & ye sea being rough, and ye women very sicke preuailed with ye seamen to put into a creeke hardby, wher they lay on ground at low-water. The nexte morning ye shipe came, but they were

fast, & could not stirr till aboute noone; In ye mean time (ye shipe maister perceiueing how ye matter was) sente his boate, to be getting ye men aboard whom he saw ready, walking aboute ye shore. But after ye first boat full was gott aboard, & she was ready to goe for more, the mr espied a greate company (both horse, & foote) with bills, & gunes, & other weapons (for ye countrie was raised to take them) ye Dutch-man seeing yt, swore (his countries oath) sacremente; and hauing ye wind faire waighed his Ancor, hoysed sayles & away. But ye poore-men which were gott aboard, were in great distress for their wiues, & children, which they saw thus to be taken, and were left destitute of their helps; and them selues also, not hauing a cloath to shifte them with, more then they had on their baks, & some scarce a peney aboute them) all they had being aboard ye barke. It drew tears from their eyes, & any thing they had, they would haue giuen to haue been a shore againe, but all in vaine, ther was no remedy, they must thus sadly part. And afterward endured a fearfull storme at sea, being .14. days or more before yey ariued at their porte, in .7. wher of they neither saw son, moone nor stars, & were driuen near ye coast of Norway; the mariners them selues often despaering of life; and once with shriks & cries, gaue ouer all, as if ye ship had been foundred in ye sea, & they sinking without recouerie. But when mans hope, & helpe wholly failed, ye lords power, & mercie appeared in their recouerie; for ye ship rose againe, & gaue ye mariners courage againe to manage here. And if modestie woud suffer me, I might declare with what feruente prayres they cried vnto ye Lord in this great distres, (espetially some of them) euen without any great distraction when ye water rane into their mouthes, & ears; & the mariners cried out we sinke, we sinke; they cried (If not with mirakelous, yet with a great hight, or degree, of deuine faith) yet Lord thou canst saue; yet Lord thou canst saue; with shuch other expressions as I will forbear. Vpon which ye shipe did not only recouer, but shortly after ye violence of ye storme begane to abate; and ye Lord filed their afflicted minds with shuch comforts as euery one cannot vnderstand. And In ye end brought them to their desired Hauen, wher ye people came flockeing admiring their deliuerance ye storme hauing ben so longe, & sore In which much hurt had been

don, as ye masters freinds related vnto him in their congratulations.

But to returne to ye others wher we left ; The rest of ye men yt were in greatest danger, made shift to escape away before ye troope could surprise them ; those only staying yt best might, to be assistante vnto ye women. But pitifull it was to see ye heauie case of these poore women in this distress ; what weeping, & crying on euery side, some for their husbands, that were caried away in ye ship as is before related. Others not knowing what should become of them, & their litle ones ; others againe melted in teares, seeing their poore litle ones hanging aboute them, crying for feare, and quaking with could. Being thus apprehended, they were hurried from one place to another, and from one Iustice to another ; till in ye ende they knew not what to doe with them. For to Imprison so many women, & Innocent children, for no other cause (many of them) but that they must goe with their husbands ; semed to be vnreasonable, and all would crie out of them, and to send them home againe was as difficult, for they aledged (as ye trueth was) they had no homes to goe to, for they had either sould, or otherwise disposed of their houses, & liuings. To be shorte, after they had been thus turmoyled a good while ; and conueyed from one constable to another, they were glad to be ridd of them in ye end vpon any termes ; for all were wearied, & tired with them. Though in ye meantime they, (poore soules) Indured miserie enough ; and thus in ye end necessitie forste a way for them.

But yt I be not tedious in these things, I will omitte ye rest, though I might relate many other notable passages, and troubles which they endured, & vnderwente In these their wanderings, & trauells both at land, & sea ; but I hast to other things. Yet I may not omitte ye fruite that came he[ar]by, for by these so publick troubls ; in so many eminent places, their cause became famouss, & occasioned many to looke into ye same ; and their godly cariage, & Christian behaiour was such, as left a deep impression in the minds of many. And though some few shrunk, at these first conflicts, & sharp beginings (as it was no maruell) yet many more came on, with fresh courage, & greatly animated others. And in ye end notwithstanding all these stormes of opposition, they all gott ouer at length, some at

one time, & some at an other; and some in one place, & some in another. And mette togeather againe according to their desires, with no small rejoycing.

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#### THE 4. CHAP.

*Showing ye reasons, & causes of their remoouall.*

After they had liued in this citie [Leyden] about some .11. or .12. years (which is ye more obseruable being ye whole time of yt famose truce between that state & ye Spaniards.) And sundrie of them were taken away by death; & many others begane to be well stricken in years (the graue mistris experience haueing taught them many things) Those prudent Gouvernours, with sundrie of ye sagest members begane both deeply to apprehend their present dangers, & wisely to foresee ye future; & thinke of timly remedy. In ye agitation of their thoughts, and much discours of things hear aboute; at length they began to incline to this conclusion, of remoouall to some other place. Not out of any newfanglednes, or other such like giddie humor, by which men are oftentimes transported to their great hurt, & danger. But for sundrie weightie, & solid reasons; some of ye cheefe of which, I will hear breefly touch. And first they saw, & found by Experience, the hardnes of ye place, & cuntrie to be such; as few in comparison would come to them; and fewer that would bide it out, and continew with them. For many yt came to them, and many more yt desired to be with them; could not endure yt great labor, and hard fare, with other Inconueniences, which they vnderwent, & were contented with. But though they loued their persons, approued their cause, and honoured their sufferings; yet they left them, as it weer weeping, as Orpah did her mother in law Naomie; or as those Romans did Cato in Vtica, who desired to be excused, & borne with, though they could not all be Catoes. For many, though they desired to Inioye ye ordinances of God in their puritie, and ye libertie of the Gospell with them. Yet (alass) they admitted of bondage, with danger of conscience; rather then to Indure these hardships, yea some preferred, & chose



ye prisons in England, rather then this libertie in Holland, with these afflictions. But it was thought that If a better, and easier place of liuing could be had; It would draw many, & take away these discouragements. Yea their pastor would often say that many of those w<sup>o</sup> both wrate, & preached now against them, If they were in a place, wher they might haue libertie, and liue comfortably, they would then practise as they did.

2ly. They saw, that though ye people generally, bore all these difficulties very chertfully, & with a resolute courage, being in ye best, & strength of their years; yet old age began to steale on many of them (and their great, & continuall labours, with other crosses, and sorrows, hastened it before ye time) so as it was not only probably thought, but apparen[t]ly seen, that within a few years more, they would be in danger to scatter (by necessities pressing them) or sinke vnder their burdens, or both. And therfore according to ye deuine prouerb, yt a wise man seeth ye plague when it cometh, & hideth him selfe, pro. 22. 3. so they like skillful & beaten souldjers were fearfull, either to be intrapped, or surrounded by their Enimies; so as they should neither be able to fight, nor flie. And therfor thought it better to dislodge betimes, to some place of better aduantage, & less danger, If any such could be found. Thirdly, as necessitie was a taskmaster ouer them, so they were forced to be such, not only to their seruants, (but in a sorte) to their dearest children; the which as it did not a litle wound ye tender harts of many a louing father, & mother; so it produced likewise sundrie sad, & sorowful effects. For many of their children, that were of best dispositions, and gracious Inclinations (haueing lernde to bear ye yoake in their youth) and willing to bear parte of their parents burden, were (often times) so oppressed with their heuie labours; that though their minds were free and willing, yet their bodies bowed vnder ye waight of ye same, and became decreped in their early youth; the vigor of nature being consumed in ye very budd as it were. But that which was more lamentable, and of all sorowes most heauie to be borne; was that many of their children, by these occasions (and ye great licentiousnes of youth in yt countrie) and ye manifold Temptations of the place, were drawne away by

euill examples into extrauagante, & dangerous courses, getting ye raines off their neks, & departing from their parents. Some became souldjers, others tooke vpon them farr viages by Sea; and other some worse courses, tending to dissolutnes, & the danger of their soules; to ye great greefe of their parents, and dishonour of God. So that they saw their posteritie would be in danger to degenerate, & be corrupted.

Lastly (and which was not least) a great hope, & Inward zeall they had of laying some good foundation (or at least to make some way therunto) for ye propagating, & aduancing ye Gospell of ye kingdom of christ in those remote parts of ye world; yea though they should be, but euen as stepping-stones, vnto others for ye performing of so great a work.

These, & some other like reasons, moued them to vnder-take this resolution of of their remouall; the which they afterward prosecuted with so great difficulties, as by the sequell will appeare.

The place they had thoughts on, was some of those vast, & vnpeopled countries of America, which are frutfull, & fitt for habitation; being deuoyd of all ciuill Inhabitants; wher ther are only saluage, & brutish men, which range vp, and doune, litle otherwise then ye wild beasts of the same. This proposition being made publike, and coming to ye scanning of all; it raised many variable opinions amongst men, and caused many fears, & doubts amongst them selues. Some from their reasons, & hops conceived; laboured to stirr vp and Incourage the rest to vndertake, & prosecute ye same; others againe out of their fears, objected against it, & sought to diuerte from it: aleding many things, and those neither vnreasonable, nor vnprobable; As that it was a great designe, and subjecte to many vnconceiueable perills, & dangers, as (besides the the casualties of ye seas (which none can be freed from) the length of ye vioage was such, as ye weake bodys of women, and other persons worne out with age, & trauille (as many of them were) could neuer be able to endure. And yet if they should, the miseries of ye land, which they should be exposed vnto, would be to hard to be borne; and lickly some, or all of them together, to consume, & vtterly to ruinate them for ther they should be liable to famine, and nakednes, & ye wante in a maner of all things. The chang of aire, diate, & drink-

ing of water, would Infecte their bodies with sore sicknesses, and greuous diseases. And also those which should escape, or ouercome these difficulties, should yett be in continuall dangers of ye saluage people; who are cruell, barbarous, & most trecherous, being most furious in their rage, and merciles wher they ouercome; not being contente only to kill, & take away life, but delight to tormente men in ye most bloodie manner that may be; fleaing some aliuie with ye shells of fishes, cutting off ye members, & Joynts of others by peesmeale; and broiling on ye coles eate ye collops of their flesh in their sight whilst they liue, with other cruelties horrible to be related. And surely It could not be thought but ye very hearing of these things, could not but moue ye very bowels of men to grate within them, and make ye weake to quake, & tremble. It was further objected, that it would require greater sumes of money to furnish such a voiage (and to fitt them with neccessaries) then their consumed estats would amounte too; and yett they must as well looke to be seconded with supplies, as presently to be trasported. Also many presidents of ill success, & lamentable misseries befallne others, in the like designes, were easie to be found, and not forgotten to be alledged. Besids their oune experience, in their former troubles, & hardships, in their remouall into Holand; and how hard a thing it was for them to liue in that strange place, though it was a neighbour countrie, & a ciuill and rich comone wealth.

It was answered, that all great, & honourable actions, are accompanied with great difficulties; and must be, both enterprised, and ouercome with answerable courages. It was granted ye dangers were great, but not desperate; the difficulties were many, but not Inuincible. For though their were many of them likly, yet they were not cartaine; It might be sundrie of ye things feared, might neuer befall; others by prouidente care & ye vse of good means (might in a great measure be preuented; and all of them (through ye help of God) by fortitude, and patience, might either be borne, or ouercome. True it was that such atempts were not to be made, and vndertaken without good ground, & reason; not rashly, or lightly as many have done for curiositie, or hope of gaine &c. But their condition was not

ordinarie; their ends were good & honourable; their calling lawfull, & vrgente; and therfore they might expecte ye blessing of God in their proceeding. yea though they should loose their Lives in this action; yet might they haue comforte in the same, and their endeauors would be honourable. They liued hear but as men in Exile, & in a poore condition; and as great miseries might possiblief befall them in this place; for ye .12. years of truce were now out, & ther was nothing but beating of drumes, and preparing for warr, the euent wherof are allway vncertaine; ye Spaniard might proue as cruell, as The saluages of America; and ye famine, and pestelence, as sore hear as ther; & their libertie less to looke out for remedie. After many other perticuler things answered, & alledged on both sides, It was fully concluded by ye major parte, to put this designe in execution; and to prosecute it by the best means they could.

#### THE .5. CHAP.

*Shewing what means they vsed for preparation to this waightie  
viag.*

And first, after thir humble praieris vnto God, for his direction & assistance, & a generall conferrance held hear aboute, they consulted what perticuler place to pitch vpon, & prepare for. Some (& none of ye meanest) had thoughts, & were earnest for Guiana, or some of those fertill places in those hott climats; others were for some parts of Virginia, wher ye English had all ready made entrance, & beginning. Those for Guiana alledged yt the cuntrie was rich, fruitfull, & blessed with a perpetuall spring and a flourishing greenes; where vigorous nature brought forth all things in abundance, & plentie without any great labour, or art of man. So as it must needs make ye Inhabitants rich; seing less prouissions of clothing and other things, would serue, then in more coulder, & less frutfull countries must be had. As also yt the Spaniards (hauing much more then they could possess) had not yet planted there, nor any where, very near ye same. But to this it was answered, that out of question, ye cuntrie was both frutfull and pleasante; and might yeeld riches, & maintenance to ye possessors, more easily then ye

other. yet other things considered, it would not be so fit for them: And first y<sup>t</sup> such hott countries, are subject to greuous diseases, and many noysome Impediments, which other more temperate places, are freer from, and would not so well agree with our English bodys. Again if they should ther liue, & doe well, the lealous Spaniard would neuer suffer them long; but would displante, or ouerthrow them. As he did y<sup>e</sup> French in Florida, who were seated further from his richest countries; and the sooner because they should haue none to protect them; & their owne strength, would be too smale to resiste so potent an Enemie, & so nea[r]e a neighbour.

On y<sup>e</sup> other hand for Virginia, it was objected; that if they liued among y<sup>e</sup> English wch weer ther planted, or so near them, as to be vnder their gouernment; they should be in as great danger to be troubled and persecuted for the cause of religion, as if they liued in England, and it might be worse. And if they liued too farr of, they should neither haue succour, nor defence frome them.

But at length y<sup>e</sup> conclusion was, to liue as a distincte body by them selues, vnder y<sup>e</sup> generall Gouerment of Virginia; and by their freinds to sue to his majestie that he would be pleased to grant them freedome of Religion; and y<sup>t</sup> this might be obtained they weer putt in good hope (by some great persons, of good rank & qualitie) that were made their freinds. W[h]ereupon .2. were chosen and & sent in to England (at y<sup>e</sup> charge of y<sup>e</sup> rest) to sollicite this matter: who found the Virginia company very desirous to haue them goe thither. And willing to grante them a patent, with as ample priuileges, as they had, or could grant to any, and to giue them the best furtherance they could. And some of y<sup>e</sup> cheefe of y<sup>t</sup> company douted not to obtaine their suite of y<sup>e</sup> king for liberty in Religion and to haue it confirmed vnder y<sup>e</sup> kings broad seale, according to their desires. But it prooued a harder peece of worke then they tooke it for; for though many means were vsed to bring it aboute, yet it could not be effected; for ther were diuerse of good worth laboured with the king to obtaine it (amongst whom was one of his cheefe Secretaries) and some other wrought with y<sup>e</sup> archbishop to giue way therunto, but it proued all in vaine. Yet thus farr they preuailed in sounding his majesties mind,

that he would conuiue at them, & not molest them (prouided they carried them selues peacably) But to allow, or tolerate them by his publick authoritie, vnder his seale, they found it would not be. And this was all (the cheefe of ye Virginia companie) or any other of their best freinds could doe in ye case yet they perswaded them to goe on, for they presumed they should not be troubled And with this answer ye messengers returned and signified what diligence had bene vsed and to what Issue things were come.

But this made a dampe in ye bussines, and caused some distraction, for many were afraid that if they should vnsettle them selues, & put of their estates, and goe vpon these hopes, it might proue dangerous and but a sandie foundation. Yea it was thought they might better haue presumed hear vpon, without making any suite at all, then haueing made it, to be thus rejected. But some of ye cheefest, thought other wise; and yt they might well proceede here-vpon, & that ye kings majestie was willing enough to Suffer them without molestation; though for other reasons he would not confirme it by any publick acte. And furdernore, if ther was no securitie in this promise Intimated, ther would be no great certainty, in a furder confirmation of ye same; for if after wards ther should be a purpose, or desire to wrong them, though they had a seale as broad as ye house flore, it would not serue ye turne; for ther would be means enew found to recall, or reuerse it And seaing therfore the course was probable, they must rest herein on Gods prouidence, as they had done in other things.

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Aboute this time whilst they were perplexed with ye proceedings of ye Virginia company, & ye Ill news from thence aboute mr Blackwell, & his company; and making Inquirey about ye Hiring, & buying of shiping for their vioage, some dutchmen made them faire offers aboute goeing with them. Also one mr Thomas Weston a mrchant of London came to Leyden aboute ye same time. (who was well acquainted with some of them, and a furtherer of them in their former proceedings) haueing much conferance wth mr Robinson and othor of ye cheefe of them perswaded them to goe on (as it seems) & not to medle with ye dutch, or too much to de-

pend on ye Virginia company; for if that failed, If they came to resolution, he, and such marchants as were his freinds (together with their owne means) would sett them forth; and they should make ready, and neither feare wante of shipping, nor money; for what they wanted should be provided. And (not so much for him selfe) as for ye satisfying of such fre[nds] as he should procure to aduenture in this bussines, they were to draw such articles of agreemente, and make such propasitions, as might ye better Induce his freinds to venture. Vpon which (after ye formere conclusion) articles were drawne, & agreed vnto, and were showne vnto him, and approued by him And afterwards by their messenger, (mr John Caruer) sent into England, who together with Robart Cushman were to receiue ye moneys & make prou[i]ssions, both for shiping, & other things for ye vioage, with this charge, not to exseede their commission, but to proseed according to ye former articles. Also some were chossen to doe ye like, for such things, as were to be prepared there; so those that weare to goe, prepared them selues with all speed, and sould of their estats and (such as were able) put in their moneys into ye commone stock; which was disposed by those appointed, for ye making of generall prouissions. Aboute this time also they had heard, both by mr Weston, and others, yt sundrie Honbl. Lords had obtained a large grante from ye king; for ye more northerly parts of that countrie, deriued out of ye Virginia patente; and wholly secluded from their Gouvermente; and to be caled by another name viz. New-England. Vnto which mr Weston, and ye cheefe of them, begane to Incline it was best for them to goe, as for other reasons, so cheefly for ye hope of present profite to be made by ye fishing that was found in yt countrie.

But as in all bussineses ye acting parte is most difficulte, espetially wher ye worke of many agents must concurr; so was it found in this. For some of those yt should haue gone in England, fell of & would not goe; other marchants, & freinds yt had ofered to aduenture their moneys with drew, and pretended many excuses. Some disliking they wente not to Guiana; others againe would aduenture nothing, excepte they wente to Virginia. Some againe, (and those that were most relied on) fell in vtter dislike with Virginia, and

would doe nothing if they wente thither. In ye midds of these distractions, they of Leyden, who had put of their estats, and laid out their moneys were brought into a greate streight fearing what Issue these things would come too, but at length ye generalitie was swaid to this latter opinion.

But now another difficultie arose, for m<sup>r</sup> Weston, and some other that were for this course, either for their better aduantage or rather for ye drawing on of others, as they pretended; would haue some of those conditions altered y<sup>t</sup> were first agreed on at Leyden To which ye .2. agents sent from Leyden (or at least one of them, who is most charged with it) did consente; seeing els y<sup>t</sup> all was like to be dashte; & ye opportunitie lost, and y<sup>t</sup> they which had put of their estats, and paid in their moneys were in hazard to be vndon. They presumed to conclude with ye marchants on those termes, in some things contrary to their order, & commission; and without giuing them notice of ye same yea It was conceled least it should make any furdere delay. Which was ye cause afterward of much trouble & contention.

It will be meete I here Inserte these conditions; which are as foloweth.

An<sup>o</sup>: 1620. July. 1

1. The aduenturers, & planters doe agree, that euery person that goeth being aged .16. years, & vpward; be rated at .10<sup>l</sup>, and ten pounds to be accounted a single share.

That he that goeth in person, and furnisheth him selfe out with .10<sup>l</sup>. either in money, or other prouissions; be accounted as haueing .20<sup>l</sup>. in stock, and in ye deuission shall receiue a duple share.

3. The persons transported, & ye aduenturers shall continue their Joynt Stock, & partnership togeather, ye space of .7. years (excepte some vnexpected Impedimente, doe cause ye whole company to agree otherwise) during which time, all profits, & benefits, that are gott by trade, traffick, trucking, working, fishing, or any other means of any person, or persons; remaine still in ye comone stock vntill ye diuision.

4. That at their coming ther, they chose out such a number of fitt persons, as may furnish their ships & boats for fishing vpon ye sea; Employing the rest in their seuerall faculties vpon ye land, as building houses, tilling, & planting



ye ground, & makinge such comodities as shall be most vsefull for ye collonie.

5. That at ye end of ye .7. years, ye capitall & profits; viz. the houses, lands, goods and chatles; be equally deuided betwixte ye aduenturers, and planters; weh done euery man shall be free, from other of them of any debt, or detrimente concerning this aduenture.

6. Whosoeuer cometh to ye colonie herafter or puteth any into ye stock, shall at the ende of ye .7. years, be alowed proportionably to ye time of his so doing.

7. He that shall carie his wife, & children, or seruants shall be alowed for euerie person now aged .16. years, & vpward, a single share in ye deuision, or if he prouid them necessaries a duble share, or if they be between .10. year old and .16. then .2. of them to be reconed for a person, both in trasportation and deuision.

8. That such children as now goe, & are vnder ye age of ten years, haue noe other shar in ye deuision, but .50. acres of vnmanured land.

9. That such persons as die before ye .7. years be expired, their executors to haue their parte or sharr, at ye deuision, proportionably to ye time of their life in ye collonie.

10. That all such persons as are of this collonie; are to haue their meate, drink, apparell, and all prouissions out of ye cōmon stock, & goods of ye said collonie.

The cheefe & principall differences betwene these, & the former conditions, stood in those .2. points; that ye houses, & lands Improued, espetially gardens, & home lotts should remaine vndeuided wholly to ye planters at ye .7. years end. 2ly. yt they should haue had .2. days in a weeke for their owne priuate Implaymente, for ye more comforte of them selues, and their families; espetially such as had families.

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#### THE. 9. CHAP:

*Of their viouage, & how they passed ye sea; and of their safe arriuall at Cape Codd.*

Sept. 6. These troubls being blowne ouer, and now all being compacte together in one shipe, they put to sea

againē with a prosperus winde, which continued diuerce days togeather, which was some Incouragmente vnto them; yet according to ye vsuall maner many were afflicted with sea-sicknes. And I may not omite hear a spetiall worke of Gods prouidence: ther was a proud & very profane yonge man, one of ye sea-men, of a lustie able body, which made him the more hauty; he would allway be contemning ye poore people in their sicknes, & cursing them dayly with greeous execrations; and did not let to tell them, that he hoped to help to cast halfe of them ouer board before they came to their Iurneys end; and to make mery with what they had; and if he were by any gently reprovēd, he would curse and swear most bitterly. But it plased God before they came halfe seas ouer, to smite this yong man with a greeueous disease, of which he dyed in a desperate maner; and so was him selfe ye first yt was throwne ouerbord, thus his curses light on his owne head; and it was an astonishmente to all his fellows, for they noted it to be ye Iust hand of God vpon him.

After they had Injoyed faire winds, and weather for a season, they were incountred many times with crosse winds, and mette with many feirce stormes, with which ye shipe was shroudly shaken, and her vpper works made very leakie; and one of the maine beames in ye midd ships was bowed & craked, which put them in some fear, that ye shipe could not be able to performe ye vioage. So some of ye cheefe of ye company (perceiueing ye mariners to feare ye suffisiencie of ye shipe, as appeared by their mutterings) they entred into serious consulltation with ye mr, & other officers of ye ship, to consider in time of ye danger; and rather to returne, then to cast them selues into a desperate, & ineuitable perill. And truly ther was great distraction, & differance of opinion amongst ye mariners them selues; faine would they doe what could be done for their wages sake (being now near halfe the seas ouer) and on ye other hand they were loath to hazard their liues too desperatly. But in examening of all opinions, the mr & others affirmed they knew ye ship to be stronge, & firme vnder water, and for the buckling of ye maine beame, ther was a great Iron scrue ye passengers brought out of Holland, which would raise ye beame into his place ye which being done, the carpenter, & mr

affirmed that with a post put vnder it, set firme in ye lower deck, & other-ways bounde he would make it sufficient. And as for ye decks & vper workes they would calke them as well as they could, and though with ye workeing of ye ship they would not longe keepe stanch, yet ther would otherwise be no great danger, if they did not ouerpress her with sails; so they committed them selues to ye will of God. & resolved to proseele. In sundrie of these stormes the winds were so feirce, and ye seas so high, as they could not bear a knote of saile, but were forced to Hull for diuerce days together; And in one of them as they thus lay at Hull in a mighty storme, a lustie yonge man (called Iohn Howland) coming vpon some occasion aboue ye gratings, was with a seele of ye shipe throwne into [ye] sea: but it pleased God, yt he caught hould of ye tope-saile halliards, which hunge ouer board, & rane out at length, yet he held his hould (though he was sundrie fadomes vnder water) till he was hald vp by ye same rope to ye brime of ye water; and then with a boathooke, & other means got into ye shipe againe & his life saued, and though he was something ill with it, yet he liued many years after, and became a profitable member, both in church & commone wealth: In all this viage ther died but one of ye passengers, which was (William Butten) a youth, seruant to Samuell Fuller when they drew near ye coast. But to omite other things (that I may be breefe) after longe beating at sea, they fell with that land which is called Cape Cod; the which being made, & certainly knowne to be it they were not a litle Ioyfull. After some deliberation had amongst them selues, & with ye mr of ye ship; they tacked aboute, and resolved to stande for ye southward (ye wind & weather being faire) to finde some place, aboute Hudsons riuier for their habitation. But after they had sailed yt course aboute halfe ye day, they fell amongst deangerous shoulds, and roring breakers, and they were so farr Intangled ther with, as they conceiued them selues in great danger, & ye wind shrinking vpon them withall, they resolved to bear vp againe for the cape; and thought them selues hapy to gett out of those dangers, before night ouertooke them, as by gods good prouidence they did; And ye next day they gott into ye cape-harbor wher they ridd in saftie. A word or too by ye way of this cape, It was thus first named by

Capten Gosnole, & his company; Because yey tooke much of yt fishe ther. Ano: 1602. And after by capten Smith was caled Cape Iames, but it retains ye former name amongst sea-men. Also yt pointe which first shewed those dangerous shoulds vnto them, they called pointe care, & Tuckers Terroure; but ye French, & Dutch to this day call it malabarr, by reason of those perilous shoulds, and ye losses they haue suffered their.

Being thus ariued in a good harbor, and brought safe to land, they fell vpon their knees & blessed ye God of heauen. who had brought them ouerye vast, & furious Ocean, and deliuered them from all ye periles, & miseries therof; againe to set their feete on ye firme and stable earth, their proper Element. And no maruell if they were thus Ioyefull, seeing wise Seneca was so affected with sailing a few miles on ye coast of his owne Italy; as he affirmed Epist. 53, that he had rather remaine twentie years on his way by land, then pass by sea to any place in a short time; so tedious, & dreadfull was ye same vnto him. \* \* \* \* \*

#### THE. 10. CHAP.

*Shewing how they sought out a place of habitation; and what befell them thereabout.*

Being thus arriued at Cap-Cod ye .11. of Nouember, and necessitie calling them to looke out a place for habitation, (as well as the maisters & mariners Inporteenitie), They hauing brought a large shalop with them out of England, stowed in quarters in ye ship, they now gott her out, & sett their carpenters to worke to trime her vp, but being much brused & shatered in ye shipe wth foule weather, they saw she would be longe in mending. Whervpon a few of them tendered them selues, to goe by land and discouere those nearest places, whilst ye shallop was in mending, and ye rather because as they wente into yt harbor ther seemed to be an opening some .2. or .3. leagues of, which ye maister Iudged to be a riuier. It was conceiued ther might be some danger in ye atempte, yet seeing them resolute they were permitted to goe; being .16. of them well armed vnder ye conduct of Captein Standish, hauing shuch Instructions giuen them as

was thought meete. They sett forth ye .15. of Nouebr : and when they had marched aboute ye space of a mile by ye sea side they espied .5. or .6. persons, with a dogg coming towards them who were saluages, but they fled from them, & ranne vp into ye woods, and ye English followed them, partly to see if they could speake with them, and partly to discover if ther might not be more of them lying in ambush, but ye Indeans seeing them selues thus followed, they againe forsooke the woods, & rane away on ye sands as hard as they could, so as they could not come near them, but followed them by ye tracte of their feet sundrie miles, and saw that they had come the same way. So night coming on they made their randeuous & set out ther sentinels, and rested in quiete *y<sup>e</sup> night*, and the next morning followed their tracte till they had headed a great creeke & so left ye sands, & turned an other way into ye woods, but they still followed them by geuss, hoping to find their dwellings, but they soone lost both them, and them selues ; falling into shuch thickets as were ready to tear their cloaths, & armore in peeces, but were most distressed for wante of drinke, but at length they found water & refreshed them selues, being ye first New-England water they drunke of, and was now in thir great thirste as pleasante vnto them as wine, or bear, had been in for-times. Afterwards they directed their course, to come to ye other shore for they knew it was a necke of land they were to crosse ouer, and so at length gott to ye sea side ; and marched to this supposed riuer, & by ye way found a pond of clear fresh water, and shortly after a good quantitie of clear ground, wher ye Indeans had formerly set corne ; and some of their graues ; and proceeding further they saw new-stuble wher corne had been Set ye same year, also they found wher latly a house had been wher some planks and a great kette was remaining, and heaps of sand newly padled with their hands, which they digging vp, found in them diuerce faire Indean baskets filled with corne, and some in eares, faire and good of diuerce collours, which seemed to them a very goodly sight, (haueing neuer seen any shuch before). this was near ye place of that Supposed riuer they came to seeck ; vnto which they wente, and found it to open it selfe into .2. armes with a high cliffe of sand in ye enterance, but more like to be crikes of salte water then

any fresh for ought they saw; and that ther was good harborige for their shalope, leauing it further to be discovered by their shalop when she was ready. so their time limeted them being expired, they returned to ye ship, least they should be in fear of their sattie: And tooke wth them parte of ye corne, and buried vp ye rest, and so like ye men from eshcoll carried with them of ye fruits of ye land, & showed their breethren; of which, & their returne they were maruelusly glad, and their harts Incouraged.

After this ye shalop being got ready they set out againe, for ye better discouery of this place, & ye mr of ye ship desired to goe him selfe, so ther went some .30. men, but found it to be no harbor for ships but only for boats; ther was allso found .2. of their houses couered with matts, & sundrie of their Implements in them, but ye people were rune away, & could not be seen, also ther was found more of their corne, & of their beans of various collours; the corne, & beans they brought away, purposing to giue them full satisfaction when they should meete with any of them (as about some .6. months afterward they did, to their good contente) And here .s to be noted a spetiall prouidence of god, and a great mercie to this poore people, that hear they gott seed to plant them corne ye next year; or els they might haue starued, for they had none, nor any liklyhood to get any till ye season had beene past (as ye sequell did manyfest) neither is it lickly they had, had this, if ye first viage had not been made, for the ground was now all couered with snow, & hard frozen; but the Lord is neuer wanting vnto his in their greatest needs, let his holy name haue all ye praise.

The month of Nouember being spente in these affairs, & much foule weather falling in; the .6. of *decemr*: they sente out their shallop againe with .10. of their principall men, & some sea men, vpon further discouery Intending to circulate that deepe bay of cap-codd, the weather was very could, & it frose so hard as ye sprea of ye sea lighting on their coats, they were as if they had been glased, yet *that night* betimes they gott downe into ye botome of ye bay, and as they drue nere ye shore they saw some .10. or .12. Indeans very busie aboute some thing; they landed aboute a league or .2. from them, and had much a doe to put a shore any wher it lay so full of flats; being landed it grew late, and they made them

selues a barricade with loggs & bowes as well as they could in ye time, & set out their Sentenill & betooke them to rest, and saw ye smoake of ye fire ye sauages made yt night. When *morning* was come they deuided their company, some to coast alonge ye shore in ye boate, and the rest marched throu ye woods to see ye land if any fit place might be for their dwelling; they came allso to ye place wher they saw the Indans ye night before, & found they had been cutting vp a great fish like a Grampus being some .2. inches thike of fate like a hogg, some peeces wher of they had left by ye way; and ye shallop found .2. more of these fishes dead on ye sands, a thing vsuall after storms in yt place by reason of ye great flats of sand that lye of. So they ranged vp and downe all yt day, but found no people, nor any place they liked; when ye sune grue low they hasted out of ye woods to meete with their shallop, to whom they made signes to come to them Into a *creeke* hard by, the which they did at high water; of which they were very glad, for they had not seen each other all yt day, since ye morning. So they made them a barricado (as vsuallly they did euey night) with loggs, staks, & thike pine bowes ye height of a man, leauing it open to leeward, partly to shelter them from ye could, & wind (making their fire in ye midle, & lying round aboute it) and partly to defend them from any sudden assaults of ye sauags, If they should surround them; so being very weery they betooke them to rest. But aboute *midnight*, they heard a hideous, & great crie, and their Sentinell caled arme arme, so they bestired them & stood to their armes, & shote of a cupple of moskets and then the noys ceased, they concluded it was a companie of wolues, or such like wildd beasts; for one of ye sea men tould them he had often heard shuch a noys in New-found Land. So they rested till about .5. of ye clock in the *morning*, for ye tide & ther purpos to goe from thence, made them be stiring betimes, So after praier they prepared for breakfast, and it being day dawning it was thought best to be carring things downe to ye boate; but some said it was not best to carrie ye armes downe, others said they would be the readier, for they had laped them vp in their coats from ye dew; but some .3. or .4. would not cary theirs till they wente them selues, yet as it fell out ye water being not high enough, they layed them downe on ye banke side, &

came vp to breakfast. But presently all on ye sudain they heard a great & strange crie, which they knew to be the same voyces, they heard in ye night, though they varied their notes, & one of their company being abroad came running in, & cried men, Indeans, Indeans; and wthall their arowes came flying amongst them, their men rane with all Speed to recouer their armes, as by ye good prouidence of god they did. In ye mean time, of those that were ther ready, tow muskets were discharged at them, and .2. more stood ready in ye enterance of ther randeuoue, but were comanded not to shoote till they could take full aime at them, & ye other .2. charged againe with all speed, for ther were only .4. had armes ther, & defended ye baricado which was first assalted; the crie of ye Indeans was dreadfull, espetially when they saw ther men rume out of ye randeuoue, towourds ye shallop to recouer their armes, the Indeans wheeling aboute vpon them, but some running out with coats of malle on, & cutlassess in their hands, they soone got their armes & let flye amongs them, and quickly stopped their violence. Yet ther was a lustie man, and no less valiante, stood behind a tree within halfe a musket shot, and let his arrows flie at them, he was seen shoot .3. arrowes which were all auoyded, he stood .3. shot of a musket till one taking full aime at him, and made ye barke or splinters of ye tree fly about his ears, after which he gaue an Extraordinary shriek; and away they wente all of them, they left some to keep ye shalop, and followed the[in] aboute a quarter of a mille and shouted once or twice, and shot of .2. or .3. peces, & so returned this they did, that they might conceiue that they were not afrade of them or any way discouraged. Thus it pleased God to vanquish their enimies, and giue them deliuerance; and by his spetiall prouidence so to dispose that not any one of them, were either hurte, or hitt, though their arrows came close by them, & on euery side them; and sundry of their coats, which hunge vp in ye barricade, were shot throw, & throw. A[f]terwards they gaue God sollamne thanks, & praise, for their deliuerance, & gathered vp a bundle of their arrows, & sente them into England afterward by ye mr of ye ship, and called that place ye first encounter. From hence they departed, & costed all along, but discerned no place likly for harbor; & therfore hasted to a place, that their



pillote, (one mr coppin who had bine in ye cuntrie before) did assure them was a good harbor which he had been in, and they might fetch it before night; of which they were glad, for it begane to be foule weather. After some houres sailling, it begane to snow, & raine, & about ye middle of ye afternoone, ye wind Increased; & ye sea became very rough; and they broake their rudder, & it was as much as .2. men could doe to steere her with a cupple of oares. But their pillott bad them be of good cheere for he saw ye harbor, but ye storme Increasing, & night drawing on, they bore what saile they could to gett in, while they could see; but herewith they broake their mast in .3. peeces & their saill fell ouer bord, in a very grown sea, so as they had like to haue been cast away; yet by gods mercie they recouered them selues, & hauing ye floud with them struck into ye harbore. But when it came too, ye pillott was deceiued in ye place, and said ye Lord be mercifull vnto them, for his eys neuer saw yt place before; & he, & the mr mate would haue runc her a shore, in a coue full of breakers before ye winde but a lusty seaman which steered, bad those which rowed if they were men, about with her, or ells they were all cast away; the which they did with speed, so he bid them be of good cheere, & row lustly for ther was a faire sound before them, & he doubted not, but they should find one place or other, wher they might ride in saftie. And though it was *very darke*, and rained sore; yet in ye end they gott vnder ye lee of a smalle Iland and remained ther all *yt night* in saftie. But they knew not this to be an Iland till morning, but were deuided in their minds, some would keepe ye boate for fear they might be amongst ye Indians; others were so weake and could, they could not endure, but got a shore, & with much adoe got fire (all things being so wett) and ye rest were glad to come to them, for after midnight ye wind shifted to the north-west, & it frose hard. But though this had been a day, & night of much trouble, & danger vnto them; yet god gaue them a *morning* of comforte & refreshinge (as vsually he doth to his children) for ye next day was a faire sunshinige day, and they found them sellues to be on an Iland secure from ye Indeans; wher they might drie their stufe fixe their peeces, & rest them selues, and gaue god thanks for his mercies, in their manifould deliuerances. And this

being the *last day of ye weeke*, they prepared ther to keepe ye *Sabath*; on *munday* they sounded ye harbor, and founde it fitt for shipping; and marched into ye land, & found diuerse cornefields, & litle runing brooks, a place (as they supposed) fitt for situation, at least it was ye best they could find, and ye season, & their presente necessitie made them glad to accepte of it. So they returned to their shipp againe with this news to ye rest of their people, which did much comforte their harts.

On ye .15. of *Desembr*: they wayed anchor to goe to ye place they had discovered, & came within .2. leagues of it, but were faine, to bear vp againe, but ye .16. day ye winde came faire and they arriued safe in this harbor. And after wards tooke better veiue of ye place, and resolved wher to pitch their dwelling; and ye .25. day begane to erecte ye first house, for commune vse to receiue them, and their goods.

#### THE .2. BOOKE.

The rest of this history (If god giue me Life, & opportunitie) I shall (for breuitie sake, handle by way of *annuals*, noting only the heads of principall things, and passages as they fell in order of time; And may seeme to be profitable to know, or to make vse of. And this may be as ye .2. Booke.

#### *The remainder of Ano: 1620.*

I shall a litle returne backe, and beginne with a combination made by them before they came a shore; being ye first foundation of their gouernement in this place. Occasioned partly by ye discontented, & mutinous speeches that some of the strangers amongst them, had let fall from them in ye ship; That when they came a shore they would vse their owne Libertie; for none had power to command them, the patente they had being for Virginia, and not for Newengland, which belonged to an other Gouerment with which ye Virginia Company had nothing to doe. And partly that such an Acte by them done (this their condition considered) might be as firme as any patent; and in some respects more sure.

The forme was as followeth.

In ye name of God amen. We whose names are vnder-written, the loyall subjects of our dread Soueraigne Lord King Iames by ye grace of God, of great Britaine, Franc, & Ireland king, defender of ye faith, &c.

Haueing vndertaken, for ye glorie of God, and aduancement of ye christian faith and honour of our king & countrie, a voyage to plant ye first Colonie in ye Northerne parts of Virginia. Doe by these presents solemnly & mutuall in ye presence of God, and one of another, Couenant, & Combine our selues togeather into a ciuill body politick; for our better ordering, & preservation & furtherance of ye ends aforesaid; and by Vertue hearof to enacte, constitute, and frame such just & equall lawes, ordinances, Acts, constitutions, & offices, from time to time, as shall be thought most meete & conuenient for ye generall good of ye Colonie: vnto which we promise all due submission and obedience. In witnes wherof we haue here vnder Subscribed our names at Cap-Codd ye .11. of Nouember, in ye year of ye raigne of our Soueraigne Lord King Iames of England, France, & Ireland ye eighteenth, and of Scotland ye fiftie fourth. An<sup>o</sup>: Dom. 1620.

After this they chose, or rather confirmed mr Iohn Caruer (a man Godly & well approued amongst them) their Gouernour for that year. And after they had provided a place for their goods, or comone store, (which were long in vnloading for want of boats, foulnes of ye winter weather, and sicknes of diuerce) and begune some small cottages for their habitation; as time would admitte they mette and consulted of lawes, & orders, both for their ciuill, & military Gouvernemente, as ye necessitie of their condition did require, still adding thervnto as vrgent occasion in seuerall times, and as cases did require.

In these hard & difficulte beginings they found some discontents & murmurings arise amongst some, and mutinous speeches & carriages in other; but they were soone quelled, & ouercome, by ye wisdom, patience, and Iust & equall carrage of things, by ye Gour: and better part wch claue faithfully togeather in ye maine. But that which was most sadd, & lamentable, was, that in .2. or .3. moneths time halfe of their company dyed, espetially in Ian: & February,

being ye depth of winter, and wanting houses & other comforts; being Infected with ye Scuruie & and other diseases, which this long vioage & their Inacomodate condition had brought vpon them; so as ther dyed some times .2. or .3. of a day, in ye foresaid time; that of .100. & odd persons scarce .50. remained: and of these in ye time of most distres ther was but .6. or .7. sound persons; who to their great comendations, be it spoken, spared no pains, night nor day, but with abundance of toyle and hazard of their owne health, fetched them wood, made them fires, drest them meat, made their beads, washed ther lothsome cloathes, cloathed & vncloathed them. In a word did all ye homly & necessarie offices for them, wch dainty & quesié stomachs cannot endure to hear named and all this willingly & cherrfully; without any grudging In ye least, shewing herein their true love vnto their freinds & bretheren; A rare example & worthy to be rememmembred. tow of these .7. were mr. William Brewster ther reuerend Elder, & Myles Standish ther Captein & military comander, (vnto whom my selfe, & many others were much beholden in our low, & sicke condition) and yet the Lord so vpheld these persons, as in this generall calamity they were not at all Infected either with sicknes, or lamnes. And what I haue said of these, I may say of many others who dyed in this generall vissitation, & others yet liuing; that whilst they had health, yea or any strength continuing they were not wanting to any that had need of them; And I doute not but their recompence is with ye Lord.

But I may not hear pass by, an other remarkable passage Not to be forgotten. As this calamitie fell among ye passengers that were to be left here to plant; and were hasted a shore and made to drinke water, that ye sea-men might haue ye more bear, and which was this author him selfe one in his sicknes desiring but a small cann of beere, It was answered that If he were their own father he should haue none; the disease begane to fall amongst them also, so as almost halfe of their company dyed before they went away, and many of their officers and lustiest men; as ye boatson, gunner, .3. quartermaisters the cooke & others. At wch ye mr was something stricken and sent to ye sick a shore and tould ye Gour: he should send for beer for them that had

need of it, though he drunke water homward bound; But now amongst his company Ther was farr another kind of carriage in this miserie then amongst ye passengers, for they that before had been boone companions in drinking, & Ioyllity in ye time of their health & wellfare, begane now to deserte one another in this calamitie, saing they would not hasard ther liues for them, they should be Infected by coming to help them in their cabins, and so after they came to lye by it; would doe litle or nothing for them, but If they dyed let them dye. But shuch of ye passengers as were yet aboard shewed theme what mercy they could; wch made some of their harts relente, as ye boatson (& some others) who was a prowd yonge man, and would often curse, & scofe at ye passengers; but when he grew weak they had compasion on him and helped him, then he confessed he did not deserue It at their hands, he had abused them in word & deed; O (saith he) you, I now see, shew your loue like Christians Indeed one to another, but we let one another lye, & dye like doggs. Another lay cursing his wife saing If it had not ben for her he had neuer come this vn lucky viage, and anone cursing his felows saing he had done this, & that for some of them, he had spent so much, & so much, amongst them, and they were now weary of him, and did not help him hauing need, another gaue his companion all he had If he died, to help him in his weaknes; he went and got a litle spise & made him a mess of meat once, or twise; and because he dyed not so soone as he expected, he went amongst his fellows, & swore ye rogue would cousen him, he would see him chooked before he made him any more meate; and yet ye pore fellow dyed before morning.

All this while ye Indians came skulking about them, and would sometimes show them selues aloofe of, but when any aproached near them, they would rune away; and once they stoale away their tools wher they had been at worke & were gone to diner. But about ye .16. of march a certaine Indian came bouldly amongst them, and spoke to them in broken English which they could well vnderstand, but maruelled at it; at length they vnderstood by discourse with him, that he was not of these parts, but belonged to ye Eastrene parts wher some English-ships came to ffish, with whom he was acquainted, & could name sundrie of them by their names,

amongst whom he had gott his language. He became profitable to them In acquainting them with many things concerning ye state of ye cuntry in ye East-parts wher he liued which was after wards profitable vnto them; as also of ye people hear, of their names, number & strength, of their situation & distance from this place, and who was cheefe amongst them. His name was SAMASETT; he tould them also of another Indian whos name was *Squanto*, a natieue of this place, who had been in England & could speake better English than him selfe. Being after some time of entertainmente, & gifts dismiss, a while after he came againe, & .5. more with him, & they brought againe all ye tooles that were stolen away before, and made way for ye coming of their great Sachem, called *Massasoit*. Who about .4. or .5. days after came with the cheefe of his freinds, & other attendance with the foresaid *Squanto*. With whom after frendly entertainment, & some gifts giuen him, they made a peace with him (which hath now continued this .24. years.—BRADFORD'S *Plymouth Plantation*, Fac-simile edition, pp., 1-57.

#### MOURT'S RELATION.

So after we had given God thanks for our deliverance, we took our shallop and went on our journey, and called this place *The First Encounter*. From hence we intended to have sailed to the foresaid *Thievish Harbour*, if we found no convenient harbour by the way. Having the wind good, we sailed all that day along the coast about fifteen leagues; but saw neither river nor creek to put into. After we had sailed an hour or two, it began to snow and rain, and to be bad weather. About the midst of the afternoon the wind increased, and the seas began to be very rough; and the hinges of the rudder broke, so that we could steer no longer with it, but two men, with much ado, were faine to serve with a couple of oars. The seas were grown so great that we were much troubled and in great danger; and night grew on. Anon, Master Coppin bade us be of good cheer; he saw the harbour. As we drew near, the gale being stiff, and we bearing great sail to get in, split our mast in three pieces, and were like to have cast away our shallop. Yet, by God's mercy, recovering ourselves, we had the flood with us, and struck into the harbour

Now he that thought that had been the place, was deceived, it being a place where not any of us had been before ; and coming into the harbour, he that was our pilot did bear up northward, which if we had continued, we had been cast away. Yet still the Lord kept us, and we bare up for an island before us ; and recovering of that island, being compassed about with many rocks, and dark night growing upon us, it pleased the Divine Providence that we fell upon a place of sandy ground, where our shallop did ride safe and secure all that night ; and coming upon a strange island, kept our watch all night in the rain upon that island. And in the morning we marched about it, and found no inhabitants at all ; and here we made our rendezvous all that day, being Saturday, 10th of December. On the Sabbath day we rested ; and on Monday we sounded the harbour, and found it a very good harbour for our shipping. We marched also into the land, and found divers cornfields, and little running brooks, a place very good for situation. So we returned to our ship again with good news to the rest of our people, which did much comfort their hearts.

## CHAPTER X.

### *Of their landing and settling at New Plymouth.*

On the 15th day we weighed anchor to go to the place we had discovered ; and coming within two leagues of the land, we could not fetch the harbour, but were fain to put round again towards Cape Cod, our course lying west, and the wind was at northwest. But it pleased God that the next day, being Saturday the 16th day, the wind came fair, and we put to sea again, and came safely into a safe harbour ; and within half an hour the wind changed, so as if we had been letted but a little, we had gone back to Cape Cod.

This harbour is a bay greater than Cape Cod, compassed with a goodly land ; and in the bay two fine islands, uninhabited, wherein are nothing but woods, oaks, pines, walnuts, beech, sassafras, vines, and other trees which we know not. This bay is a most hopeful place ; innumerable store of fowl, and excellent good ; and cannot but be of fish in their seasons ; skate, cod, turbot, and herring, we have tasted of ;

abundance of muscles, the greatest and best that ever we saw; crabs and lobsters in their time, infinite. It is in fashion like a sickle, or fish-hook.

Monday, the 18th day, we went a land, manned with the master of the ship and three or four of the sailors. We marched along the coast in the woods some seven or eight miles, but saw not an Indian nor an Indian house; only we found where formerly had been some inhabitants, and where they had planted their corn. We found not any navigable river, but four or five small running brooks of very sweet fresh water, that all run into the sea. The land for the crust of the earth is, a spit's depth, excellent black mould, and fat in some places; two or three great oaks, but not very thick, pines, walnuts, beech, ash, birch, hazel, holly, asp, sassafras in abundance, and vines every where, cherry trees, plum trees, and many others which we know not. Many kinds of herbs we found here in winter, as strawberry leaves innumerable, sorrel, yarrow, carvel, brooklime, liver-wort, water-cresses, great store of leeks and onions, and an excellent strong kind of flax and hemp. Here is sand, gravel, and excellent clay, no better in the world, excellent for pots, and will wash like soap, and great store of stone, though somewhat soft, and the best water that ever we drunk; and the brooks now begin to be full of fish. That night, many being weary with marching, we went aboard again.

The next morning, being Tuesday, the 19th of December, we went again to discover further; some went on land, and some in the shallop. The land we found as the former day we did; and we found a creek, and went up three English miles, a very pleasant river at full sea. A bark of thirty tons may go up; but at low water scarce our shallop could pass. This place we had a great liking to plant in, but that it was so far from our fishing, our principal profit, and so encompassed with woods, that we should be in much danger of the salvages; and our number being so little, and so much ground to clear; so as we thought good to quit and [not?] clear that place till we were of more strength. Some of us, having a good mind, for safety, to plant in the greater isle, we crossed the bay, which is there five or six miles over, and found the isle about a mile and a half or two miles about, all wooded, and no fresh water but two or three pits,



that we doubted of fresh water in summer, and so full of wood as we could hardly clear so much as to serve us for corn. Besides, we judged it cold for our corn, and some part very rocky; yet divers thought of it as a place defensible, and of great security. That night we returned again a shipboard, with resolution the next morning to settle on some of those places.

So in the morning, after we had called on God for direction, we came to this resolution, to go presently ashore again, and to take a better view of two places which we thought most fitting for us; for we could not now take time for further search or consideration, our victuals being much spent, especially our beer, and it being now the 19th of December. After our landing and viewing of the places, so well as we could, we came to a conclusion, by most voices, to set on the main land, on the first place, on a high ground, where there is a great deal of land cleared, and hath been planted with corn three or four years ago; and there is a very sweet brook runs under the hill side, and many delicate springs of as good water as can be drunk, and where we may harbour our shallops and boats exceeding well; and in this brook much good fish in their seasons; on the further side of the river also much corn-ground cleared. In one field is a great hill, on which we point to make a platform, and plant our ordnance, which will command all round about. From thence we may see into the bay, and far into the sea; and we may see thence Cape Cod. Our greatest labor will be fetching of our wood, which is half a quarter of an English mile: but there is enough so far off. What people inhabit here we yet know not, for as yet we have seen none. So there we made our rendezvous, and a place for some of our people, about twenty, resolving in the morning to come all ashore and to build houses.—*Young's Chronicles of the Pilgrims*, 159-168.

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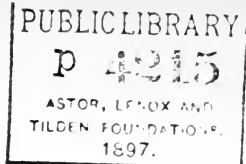
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# American History Leaflets.

COLONIAL AND CONSTITUTIONAL.

No. 30—NOVEMBER, 1896.

## CONSTITUTIONAL DOCTRINES OF WEBSTER, HAYNE AND CALHOUN.

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No discussion in Congress aroused so much public interest, between 1820 and 1850, as the series of debates on the nature of the Union, in 1830 and 1833. In both cases the Northern champion was Daniel Webster; in 1830 he chose out Hayne as his adversary, but his real object was to force him to a clear statement of the doctrine of nullification which had been set forth by Calhoun in 1828. The evidence shows that Webster had carefully read the "Exposition of 1828"; and his argument was intended to meet it. In 1833, he had the opportunity to confront Calhoun in the senate and they crossed swords in the masterly fashion shown in the extracts below.

\* The issue was, whether or no a state could be compelled to accept an act of Congress which it believed to be unconstitutional. The immediate effect of these speeches was to concentrate the arguments of that critical period; but the later effects were even more important. South Carolina continued at intervals to reassert the right of nullification, or if need be of secession, down to 1861; and Webster's line of argument became the standard defense of the Union, and had great influence in determining the North to resist secession in 1861.

The extracts are made from the collected writings,—Daniel Webster, *Works*, and John C. Calhoun, *Works*—as being the most authoritative texts; and from the records of debates in Congress—Hayne's speech. A set of extracts from three of these speeches will be found printed in Alexander Johnston, *Representative American Orations*, I.

The Virginia and Kentucky Resolutions, to which both sides frequently allude, and the secession ordinances, which illustrate the farthest point reached in States Rights, are printed in *American History Leaflets*, Nos. 12, 15; Lincoln's doctrine as to the Union in the same series, No. 18.

Brief accounts of the controversy over nullification (including these speeches) may be found in H. von Holst, *John C. Calhoun*, ch. iv; H. C. Lodge, *Daniel Webster*, chs. vi, vii; Woodrow Wilson, *Division and Reunion*, ch. ii; W. G. Sumner, *Andrew Jackson*, chs. x, xiii. More exhaustive accounts in George T. Curtis, *Life of Daniel Webster*, I, chs. xvi—xix; George Tucker, *History of the United States*, IV, chs. xxvi, xxvii; H. Von Holst, *Constitutional History*, I, ch. xii.

Special works on the subject are David F. Houston, *Critical Study of Nullification in South Carolina* (Harvard Historical Studies, III.); Caleb W. Loring, *Nullification, Secession, Webster's Argument*. A brief bibliography on the subject is Channing and Hart, *Guide to the Study of American History*, § 183, with references to other bibliographies.

## I—1828. Calhoun's South Carolina Exposition.

Our system, then, consists of two distinct and independent Governments. The general powers, expressly delegated to the General Government, are subject to its sole and separate control; and the States cannot, without violating the constitutional compact, interpose their authority to check, or in any manner to counteract its movements, so long as they are confined to the proper sphere. So, also, the peculiar and local powers reserved to the States are subject to their exclusive control; nor can the General Government interfere, in any manner, with them, without violating the Constitution.

In order to have a full and clear conception of our institutions, it will be proper to remark that there is, in our system, a striking distinction between *Government* and

*Sovereignty.* The separate governments of the several States are vested in their Legislative, Executive, and Judicial Departments; while the sovereignty resides in the people of the States respectively. The powers of the General Government are also vested in its Legislative, Executive, and Judicial Departments, while the sovereignty resides in the people of the several States who created it. But, by an express provision of the Constitution, it may be amended or changed by three fourths of the States; and thus each State, by assenting to the Constitution with this provision, has modified its original right as a sovereign, of making its individual consent necessary to any change in its political condition; and, by becoming a member of the Union, has placed this important power in the hands of three fourths of the States,—in whom the highest power known to the Constitution actually resides. Not the least portion of this high sovereign authority resides in Congress, or any of the departments of the General Government. They are but the creatures of the Constitution, and are appointed but to execute its provisions; and, therefore, any attempt by all, or any of these departments, to exercise any power which, in its consequences, may alter the nature of the instrument, or change the condition of the parties to it, would be an act of usurpation.....

As a substitute for the rightful remedy, in the last resort, against the encroachments of the General Government on the reserved powers, resort has been had to a rigid construction of the Constitution. A system like ours, of divided powers, must necessarily give great importance to a proper system of construction; but it is perfectly clear that no rule of construction, however perfect, can, in fact, prescribe bounds to the operation of power. All such rules constitute, in fact, but an appeal from the minority to the justice and reason of the majority; and if such appeals were sufficient of themselves to restrain the avarice or ambition of those vested with power, then may a system of technical construction be sufficient to protect against the encroachment of power; but, on such supposition, reason and justice might alone be relied on, without the aid of any constitutional or artificial restraint whatever.....

If it be conceded, as it must be by every one who is the

least conversant with our institutions, that the sovereign powers delegated are divided between the General and State Governments, and that the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty,—of which the States cannot be divested without losing their sovereignty itself,—and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is, in reality, not to divide it at all; and to reserve such exclusive right to the General Government (it matters not by what department to be exercised), is to convert it, in fact, into a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights. It is impossible to understand the force of terms, and to deny so plain a conclusion. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the States and the General Government. But the existence of the right of judging of their powers, so clearly established from the sovereignty of States, as clearly implies a veto or control, within its limits, on the action of the General Government, on contested points of authority; and this very control is the remedy which the Constitution has provided to prevent the encroachments of the General Government on the reserved rights of the States; and by which the distribution of power, between the General and State Governments, may be preserved for ever inviolable, on the basis established by the Constitution. It is thus effectual protection is afforded to the minority, against the oppression of the majority.....

.....How is the remedy to be applied by the States? In this inquiry a question may be made,—whether a State can interpose its sovereignty through the ordinary Legislature, but which the committee do not deem it necessary to investigate. It is sufficient that plausible reasons may be assigned against this mode of action, if there be one (and there is one) free from all objections. Whatever doubts may be raised as to the question,—whether the respective Legisla-

tures fully represent the sovereignty of the States for this high purpose, there can be none as to the fact that a Convention fully represents them for all purposes whatever. Its authority, therefore, must remove every objection as to form, and leave the question on the single point of the right of the States to interpose at all. When convened, it will belong to the Convention itself to determine, authoritatively, whether the acts of which we complain be unconstitutional; and, if so, whether they constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition of the State to protect its right. If this question be decided in the affirmative, the Convention will then determine in what manner they ought to be declared null and void within the limits of the State; which solemn declaration, based on her rights as a member of the Union, would be obligatory, not only on her own citizens, but on the General Government itself; and thus place the violated rights of the State under the shield of the Constitution.....

If the committee do not greatly mistake, the checking or veto power never has, in any country, or under any institution, been lodged where it was less liable to abuse. The great number, by whom it must be exercised, of the people of a State,—the solemnity of the mode,—a Convention specially called for the purpose, and representing the State in her highest capacity,—the delay,—the deliberation,—are all calculated to allay excitement,—to impress on the people a deep and solemn tone, highly favorable to calm investigation and decision. Under such circumstances, it would be impossible for a mere party to maintain itself in the State, unless the violation of its rights be palpable, deliberate, and dangerous. The attitude in which the State would be placed in relation to the other States,—the force of public opinion which would be brought to bear on her,—the deep reverence for the General Government,—the strong influence of all public men who aspire to office or distinction in the Union,—and, above all, the local parties which must ever exist in the State, and which, in this case, must ever throw the powerful influence of the minority on the side of the General Government,—constitute impediments to the exercise of this high protective right of the State, which must render it safe. So powerful, in fact, are these difficulties, that nothing but



truth and a deep sense of oppression on the part of the people of the State, will ever sustain the exercise of the power;—and if it should be attempted under other circumstances, it must speedily terminate in the expulsion of those in power, to be replaced by others who would make a merit of closing the controversy, by yielding the point in dispute.

.....But suppose in this the Committee should be mistaken,—still there exists a sufficient security. As high as this right of interposition on the part of a State may be regarded in relation to the General Government, the constitutional compact provides a remedy against its abuse. There is a higher power,—placed above all by the consent of all,—the creating and preserving power of the system,—to be exercised by three-fourths of the States,—and which, under the character of the amending power, can modify the whole system at pleasure,—and to the acts of which none can object. Admit, then, the power in question to belong to the States,—and admit its liability to abuse,—and what are the utmost consequences, but to create a presumption against the constitutionality of the power exercised by the General Government,—which, if it be well founded, must compel them to abandon it; or, if not, to renounce the difficulty by obtaining the contested power in the form of an amendment to the Constitution. If, on an appeal for this purpose, the decision be favorable to the General Government, a disputed power will be converted into an expressly granted power:—but, on the other hand, if it be adverse, the refusal to grant will be tantamount to an inhibition of its exercise; and thus, in either case, the controversy will be determined. And ought not a sovereign State, as a party to the constitutional compact, and as the guardian of her citizens and her peculiar interests, to have the power in question? Without it, the amending power must become obsolete, and the Constitution, through the exercise of construction, in the end utterly subverted.....

.....Is there danger, growing out of this division, that the State Legislatures may encroach on the powers of the General Government? The authority of the Supreme Court is adequate to check such encroachments. May the General Government, on the other hand, encroach on the rights reserved to the States respectively? To the States

respectively—each in its sovereign capacity—is reserved the power, by its veto, or right of interposition, to arrest the encroachment, and, finally, may this power be abused by a State, so as to interfere improperly with the powers delegated to the General Government? There is provided a power, even over the Constitution itself, vested in three-fourths of the States, which Congress has the authority to invoke, and may terminate all controversies in reference to the subject, by granting or withholding the right in contest. Its authority is acknowledged by all; and to deny or resist it, would be, on the part of the State, a violation of the constitutional compact, and a dissolution of the political association, as far as it is concerned. This is the ultimate and highest power,—and the basis on which the whole system rests.....—JOHN C. CALHOUN, *Works*, VI., 36-55 passim.

2—1830, Jan. 20. Webster's First Reply to Hayne.

.....Consolidation !—that perpetual cry both of terror and delusion,—Consolidation ! Sir, when gentlemen speak of the effects of a common fund, belonging to all the States, as having a tendency to consolidation, what do they mean ? Do they mean, or can they mean anything more than that the union of the States will be strengthened by whatever continues or furnishes inducements to the people of the States to hold together ? If they mean merely this, then no doubt, the public lands as well as everything else in which we have a common interest, tend to consolidation ; and to this species of consolidation every true American ought to be attached ; it is neither more or less than strengthening the union itself. This is the sense in which the framers of the Constitution use the word *consolidation*, and in this sense I adopt and cherish it. They tell us, in the letter submitting the Constitution to the consideration of the country, that, “ In all our deliberations on this subject, we kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less

rigid on points of inferior magnitude than might have been otherwise expected."

This, Sir, is General Washington's consolidation. This is true constitutional consolidation. I wish to see no new powers drawn to the general government; but I confess I rejoice in whatever tends to strengthen the bond that unites us, and encourages the hope that our Union may be perpetual. And therefore I cannot but feel regret at the expression of such opinions as the gentleman has avowed, because I think their obvious tendency is to weaken the bond of our connection. I know that there are some persons in the part of the country from which the honorable member comes, who habitually speak of the Union in terms of indifference, or even of disparagement. The honorable member himself is not, I trust, and can never be, one of these. They significantly declare, that it is time to calculate the value of the Union; and their aim seems to be to enumerate, and to magnify, all the evils, real and imaginary, which the government under the Union produces.

The tendency of all these ideas and sentiments is obviously to bring the Union into discussion, as a mere question of present and temporary expediency; nothing more than a mere matter of profit and loss. The Union is to be preserved, while it suits local and temporary purposes to preserve it; and to be sundered whenever it shall be found to thwart such purposes. Union, of itself, is considered by the disciples of this school as hardly a good. It is only regarded as a possible means of good; or, on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital necessity to our welfare. Sir, I deprecate and deplore this tone of thinking and acting. I deem far otherwise of the union of the States; and so did the framers of the Constitution themselves. What they said, I believe; fully and sincerely believe, that the union of the States is essential to the prosperity and safety of the States. I am a unionist, and, in this sense, a national republican. I would strengthen the ties that hold us together. Far, indeed, in my wishes, very far distant be the day, when our associated and fraternal stripes shall be severed asunder, and when that happy constellation under which we have risen to so much renown

shall be broken up, and sink, star after star, into obscurity and night!—DANIEL WEBSTER, *Works*, III., 257—259.

### 3—1830, Jan. 26. Hayne's Reply to Webster.

.....It cannot be doubted, and is not denied, that, before the formation of the constitution, each State was an independent sovereignty, possessing all the rights and powers appertaining to independent nations; nor can it be denied that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the Federal Government. This would have been the case, even if no positive provision to that effect had been inserted in that instrument. But to remove all doubt, it is expressly declared, by the tenth article of the amendments of the constitution, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, or reserved to the states, respectively, or to the people." The true nature of the Federal constitution, therefore is (in the language of Mr. Madison) "a compact to which the states are parties"—a compact by which each state, acting in its sovereign capacity, has entered into an agreement with the other states, by which they have consented that certain designated powers shall be exercised by the United States, in the manner prescribed in the instrument. Nothing can be clearer, than that, under such a system, the Federal Government, exercising strictly delegated powers, can have no right to act beyond the pale of its authority, and that all such acts are void. A state, on the contrary, retaining all powers not expressly given away, may lawfully act in all cases where she has not voluntarily imposed restrictions on herself. Here then, is a case of compact between sovereigns; and the question arises, what is the remedy for a clear violation of its express terms by one of the parties? And here the plain obvious dictate of common sense is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases, "that, where resort can be had to no common superior, the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated" (Madison's Report, p. 20.). When it

is insisted by the gentleman that one of the parties (the Federal Government) "has the power of deciding ultimately and conclusively upon the extent of its own authority," I ask for the grant of such a power. I call upon the gentleman to show it to me in the constitution. It is not to be found there. If it is to be inferred from the nature of the compact, I aver that not a single argument can be urged in support of such an inference, in favor of the Federal Government, which would not apply, with at least equal force, in favor of a State. All sovereigns are of necessity equal; and any one State, however small in population or territory, has the same rights as the rest, just as the most insignificant nation in Europe is as much sovereign as France, or Russia, or England.

The very idea of a division of power by compact, is destroyed by a right claimed and exercised by either to be the exclusive interpreter of the instrument. . . . . It only remains therefore to inquire whether the States have surrendered their sovereignty, and consented to reduce themselves to mere corporations. The whole form and structure of the Federal Government, the opinions of the framers of the constitution, and the organization of the State Governments, demonstrate that, though the states have surrendered certain specific powers, they have not surrendered their sovereignty. They have each an independent Legislature, Executive, and Judiciary, and exercise jurisdiction over the lives and property of their citizens. They have, it is true, voluntarily restrained themselves from doing certain acts, but, in all other respects, they are as omnipotent as any independent nation whatever. Here, however, we are met by the argument, that the constitution was not formed by the States in their sovereign capacity, but by the people; and it is therefore inferred that, the Federal Government being created by all the people, must be supreme; and though it is not contended that the constitution may be rightfully violated, yet it is insisted that from the decision of the Federal Government there can be no appeal. It is obvious that this argument rests on the idea of state inferiority. Considering the Federal Government as one whole, and the States merely as component parts, it follows, of course, that the former is as much superior to the latter as

the whole is to the parts of which it is composed. Instead of deriving power by delegation from the States to the union, this scheme seems to imply that the individual States derive their power from the United States, just as petty corporations may exercise so much power, and no more, as their superior may permit them to enjoy. This notion is entirely at variance with all our conceptions of State rights, as those rights were understood by Mr. Madison and others, at the time the constitution was framed. I deny that the constitution was framed by the people in the sense in which that word is used on the other side, and insist that it was framed by the States acting in their sovereign capacity. When, in the preamble of the constitution, we find the words "We the people of the United States," it is clear they can only relate to the people as citizens of the several states, because the Federal Government was not then in existence.

We accordingly find, in every part of that instrument, that the people are always spoken of in that sense. Thus, in the second section of the first article it is declared, that "the House of Representatives shall be composed of members chosen every second year, by the people of the several States." To show that, in entering into this compact, the States acted in their sovereign capacity, and not merely as parts of one great community, what can be more conclusive than the historical fact that, when every State had consented to it except one, she was not held to be bound?.....

But, the gentleman insists that the tribunal provided by the constitution for the decision of controversies between the States and the Federal Government, is the Supreme Court, and here again I call for the authority on which the gentleman rests the assertion, that the Supreme Court has any jurisdiction whatever over questions of sovereignty between the States and the United States. When we look into the constitution we do not find it there. I put entirely out of view any act of Congress on the subject. We are not looking into laws, but the constitution.

It is clear that questions of sovereignty are not the proper subjects of judicial investigation. They are much too large, and of too delicate a nature, to be brought within the jurisdiction of a court of justice.....  
.....When it is declared that the constitution, and

laws of the United States made in pursuance thereof, shall be the supreme law of the land, it is manifest that no indication is given either as to the power of the Supreme Court to bind the States by its decisions, nor as to the course to be pursued in the event of laws being passed not in pursuance of the constitution.....

.....If the Supreme Court of the United States can take cognizance of such a question, so can the Supreme Courts of the States. But, sir, can it be supposed for a moment, that, when the States proceeded to enter into the compact, called the constitution of the United States, they could have designed, nay, that they could, under any circumstances, have consented to leave to a court to be created by the Federal Government, the power to decide, finally, on the extent of the powers of the latter, and the limitations on the powers of the former? If it had been designed to do so, it would have been so declared and assuredly some provision would have been made to secure, as umpires, a tribunal somewhat differently constituted from that whose appropriate duties is the ordinary administration of justice. But to prove, as I think conclusively, that the Judiciary were not designated to act as umpires, it is only necessary to observe that, in a great majority of cases, that court could manifestly not take jurisdiction of the matters in dispute.....

.....the next point to be considered is, whether Congress themselves possess the right of deciding conclusively on the extent of their own powers. This I know is a popular notion, and it is founded on the idea, that, as all the States are represented here, nothing can prevail which is not in conformity with the will of the majority; and it is supposed to be a republican maxim "that the majority must govern.".....

Now will any one contend that it is the true spirit of this Government that the will of a majority of Congress, should, in all cases, be the supreme law?.....If the will of a majority of Congress is to be the supreme law of the land, it is clear the constitution is a dead letter, and has utterly failed of the very object for which it was designed—the protection of the rights of the minority. But when, by the very terms of compact, strict limitations are imposed on every branch of the Federal Government, and it is, moreover, ex-

pressly declared that all powers, not granted to them, "are reserved to the States or to the people" with what show of reason can it be contended that the Federal Government is to be the exclusive judge of the extent of its own powers?..

No doubt can exist, that, before the States entered into the compact, they possessed the right, to the fullest extent, of determining the limits of their own powers—it is incident to all sovereignty. Now, have they given away that right, or agreed to limit or restrict it in any respect? Assuredly not. They have agreed that certain specific powers shall be exercised by the Federal Government; but the moment that government steps beyond the limits of its charter, the right of the states "to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them," is as full and complete as it was before the constitution was formed. It was plenary then, and never having been surrendered, must be plenary now. But what then, asks the gentleman? A State is brought into collision with the United States, in relation to the exercise of unconstitutional powers; who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns as to the true construction of a compact.....

The creating power is three-fourths of the States. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows, of necessity, that, in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common superior—(that power which may give any character to the constitution they may think proper) viz: three-fourths of the States. This is the view of the matter taken by Mr. Jefferson himself, who, in 1821, expressed himself in this emphatic manner: "It is a fatal heresy to suppose that either our state Governments are superior to the Federal, or the Federal to the State; neither is authorized literally to decide what belongs to itself, or its co-partner in government, in difference of opinion between their different sets of public servants; the appeal is to neither, but to their employers, peaceably assembled by their representatives in convention."



But it has been asked, why not compel a state, objecting to the constitutionality of a law, to appeal to their sister States, by a proposition to amend the constitution? I answer, because such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the States are not bound to submit to, even for a day, and because it would be absurd to suppose that any redress could ever be obtained by such an appeal, even if a State were at liberty to make it.....

The gentleman has called upon us to carry out our scheme practically. Now, sir, if I am correct in my view of this matter, then it follows, of course, that the right of a State being established, the Federal Government is bound to acquiesce in a solemn decision of a State, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment to the constitution. This solemn decision of a state (made either through its Legislature, or a convention, as may be supposed to be the proper organ of its sovereign will—a point I do not propose now to discuss) binds the Federal Government, under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting State. How, then, can any collision ensue between the Federal and State Governments, unless, indeed, the former should determine to enforce the law by unconstitutional means? What could the Federal Government do, in such a case? Resort, says the gentleman, to the courts of justice. Now, can any man believe that, in the face of a solemn decision of a State, that an act of Congress is “a gross, palpable, and deliberate violation of the constitution,” and the interposition of its sovereign authority to protect its citizens from the usurpation, that juries could be found ready merely to register the decrees of the Congress, wholly regardless of the unconstitutional character of their acts? Will the gentleman contend that juries are to be coerced to find verdicts at the point of the bayonet?.....

Sir, if Congress should ever attempt to enforce any such laws, they would put themselves so clearly in the wrong, that no one could doubt the right of the State to exert its protecting power.....—*Congressional Debates*, VI., part I., 86-92, passim.

## 4—1830, Jan. 26. Webster's Second Reply to Hayne.

.....There yet remains to be performed, Mr. President, by far the most grave and important duty, which I feel to be devolved on me by this occasion. It is to state and defend, what I consider to be the true principles of the Constitution under which we are here assembled.....

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State legislatures to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing *under* the Constitution, not as a right to overthrow it on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that, if the exigency of the case, in the opinion of any State government require it, such State government may, by its own sovereign authority, annul an act of the general government which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine, and the doctrine which he maintains. I propose to consider it, and compare it with the Constitution.....

.....What he contends for is, that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it,

by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine that unconstitutional laws bind the people. The great question is, Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the Constitution by Congress, the States have a constitutional right to interfere and annul the law of Congress, is the proposition of the gentleman. I do not admit it. If the gentleman had intended no more than to assert the right of revolution for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution or rebellion, on the other. I say, the right of a State to annul a law of Congress cannot be maintained, but on the ground of the inalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the Constitution and in defiance of the Constitution, which may be resorted to when a revolution is to be justified. But I do not admit, that, under the Constitution and in conformity with it, there is any mode in which a State government, as a member of the Union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government and the source of its power. Whose agent is it? Is it the creature of the State legislatures, or the creature of the people? If the Government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this general government is the creature of the States,

but that it is the creature of each of the States severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, Sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the State governments. We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State governments, or to the people themselves. So far as the people have restrained State sovereignty by the expression of their will, in the Constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred propounds that State sovereignty is only to be controlled by its own "feeling of justice"; that is to say, it is not to be controlled at all, for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of

sovereignty; but the Constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the Constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." The opinion referred to, therefore, is in defiance of the plainest provisions of the Constitution.....

It so happens that, at the very moment, when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. *They* hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional and highly expedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely, upon the old Confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union! What is such a state of things but a mere connection during pleasure, or, to use the phraseology of the times, *during feeling*? And that feeling, too, not the feeling of the people, who established the Constitution, but the feeling of the State governments.....

I must now beg to ask, Sir, Whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion founded

in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people as the State governments. It is created for one purpose; the State governments for another. It has its own powers, they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the Constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole government, President, Senate, and House of Representatives is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, Sir, is the independent offspring of the popular will. It is not the creature of State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this Constitution, Sir, be the creature of State legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

✓ The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States, or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear as to avoid the possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion or State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion and State construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

✓ But, Sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, Sir, that "*the Constitution and the laws*

*of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."*

This, sir, was the first great step. By this the supremacy of the Constitution and the laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, "*that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.*" These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government, without them a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what gives them the right to say to the people: "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent,—"*Who made you a judge over another's servants? To their own masters they stand or fall.*"

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in an extreme case, a State government may protect the people from intolerable oppression. Sir, in such a case the people might protect themselves without the aid of the State governments. Such a case warrants revolution.....



To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided in which those doubts as they should arise, might be peaceably but authoritatively, solved.....

But, Sir, what is this danger, and what are the grounds of it? Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.....

.... I profess, Sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, Sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty

when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union may be best preserved, but how tolerable might be the condition of the people when it should be broken up and destroyed. While the Union lasts we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that in my day at least that curtain may not rise! God grant that on my vision never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, not a single star obscured, bearing for its motto, no such miserable interrogatory as "What is all this worth?" nor those other words of delusion and folly, "Liberty first and Union afterwards"; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart,—*Liberty and Union, now and forever, one and inseparable!*—DANIEL WEBSTER, *Works*, III., 317-342 *passim*.

### 5—1830, Jan. 27. Webster's Concluding Remarks.

A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions and an inference. His propositions are,—

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one of all power whatever.

3. Therefore, (such is his inference), the General Government does not possess the authority to construe its own powers.

Now, Sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas involved in this so elaborate and systematic argument.

The Constitution, it is said, is a compact *between States*; the States, then, and the States only, *are parties* to the compact. How comes the general government itself a *party*? Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the Constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses to consider the general government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, without the power of judging on the terms of compact. Pray, Sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main propositions were conceded to him; that is to say, if I admit, for the sake of argument, that the Constitution is a compact between States, the inferences which he draws from that proposition are warranted by no just reasoning. If the Constitution be a compact between States, still that Constitution, or that compact, has established a government with certain powers; and whether it be one of those powers, that it shall construe and interpret for itself the terms of the compact in doubtful cases, is a question which can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the government even thus created might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old Confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any State law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress under the confederation, although that confederation was a compact between States; and for this plain reason; that it would have been competent to the States, who alone were parties to the compact, to agree who should decide in cases of dispute arising on the construction of the compact.

For the same reason, Sir, if I were now to concede to the gentleman his principal proposition, namely, that the Constitution is a compact between States, the question would still be, What provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? And this question would still be answered, and conclusively answered by the Constitution itself.

While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The Constitution declares, that the *laws of Congress passed in pursuance of the Constitution shall be the supreme law of the land*. No construction is necessary here. It declares, also, with equal plainness and precision, *that the judicial power of the United States shall extend to every case arising under the law of Congress*. This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, Sir, how has the gentleman met this? Suppose the Constitution to be a compact, yet here are its terms; and how does the gentleman get rid of them? He cannot argue the *seal off the bond*, nor the words out of the instrument. Here they are; what answer does he give to them? None in the world, Sir, except, that the effect of this would be to place the States in a condition of inferiority; and that it results from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the Constitution. The gentleman

says, if there be such a power of final decision in the general government, he asks for the grant of that power. Well, Sir, I show him the grant. I turn him to the very words. I show him that the laws of Congress are made supreme; and that the judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result *from the nature of things*, that the States, being parties, must judge for themselves.

I have admitted, that, if the Constitution were to be considered as the creature of the State governments, it might be modified, interpreted, or construed according to their pleasure. But, even in that case, it would be necessary that they should *agree*. One alone could not interpret it conclusively; one alone could not construe it; one alone could not modify it. Yet the gentleman's doctrine is, that Carolina alone may construe and interpret that compact which equally binds all, and gives equal rights to all.

So, then, Sir, even supposing the Constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *government* established by it, and vested by it with the powers of trying and deciding doubtful questions; and secondly, because, if the Constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, Sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, Sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the Constitution is a compact between State governments. The Constitution, itself, in its very front, refutes that idea; it declares that it is ordained and established *by the people of the United States*. So far from saying that it is established by the governments of the several States, it does not even say that it is established by the people *of the several States*; but it pronounces that it is established by the people of the United States, in the aggregate. The gentleman says, it must mean no more than the people of the several States. Doubtless,

the people of the several States, taken collectively, constitute the people of the United States ; but it is in this, their collective capacity, it is all the people of the United States, that they established the Constitution. So they declare ; and words cannot be plainer than the words used.

When the gentleman says the Constitution is a compact between the States, he uses language exactly applicable to the old Confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The Confederation was, in strictness, a compact ; the States, as States, were parties to it. We had no other general government. But that was found insufficient and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis ; not a confederacy, not a league, not a compact between States, but a *Constitution* ; a popular government, founded in popular election, directly responsible to the people themselves, and divided into branches with prescribed limits of power, and prescribed duties. They ordained such a government, they gave it the name of a *Constitution*, and therein they established a distribution of power between this, their general government, and their several State governments. When they become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the States.

The gentleman, Sir, finds analogy where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of government, with powers to execute itself, and fulfil its duties.

I admit, Sir, that this government is a government of checks and balances ; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different governments. He argues, that, if we

transgress our constitutional limits, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the State government each in its proper sphere, avoiding as carefully as possible every kind of interference.

Finally, Sir, the honorable gentleman says, that the States will only interfere by their power, to preserve the Constitution. They will not destroy it, they will not impair it; they will only save, they will only preserve, they will only strengthen it! Ah! Sir, this is but the old story. All regulated governments, all free governments, have been broken by similar disinterested and well-disposed interference. It is the common pretence. But I take leave of the subject.—DANIEL WEBSTER, *Works*, III., 343-347.

## 6—1833, Feb. 15, 16. Calhoun's Speech on the Force Bill.

The Federal Government has, by an express provision of the constitution, the right to lay imports. The State has never denied or resisted this right, nor even thought of so doing. The Government has, however, not been contented with exercising this power as she has a right to do, but has gone a step beyond it, by laying imposts, not for revenue, but protection. This the State considers as an unconstitutional exercise of power—highly injurious and oppressive to her and the other staple States, and has, accordingly, met it with the most determined resistance. ....

There is another misstatement, as to the nature of the controversy, so frequently made in debate, and so well calculated to mislead, that I feel bound to notice it. It has been said that South Carolina claims the right to annul the constitution and laws of the United States; and to rebut this supposed claim, the gentleman from Virginia (Mr. Rives) has gravely quoted the constitution, to prove that the constitution, and the laws made in pursuance thereof, are the supreme laws of the land—as if the State claimed the right to

act contrary to this provision of the constitution. Nothing can be more erroneous: her object is not to resist laws made in pursuance of the constitution, but those made without its authority, and which encroached on her reserved powers. She claims not even the right of judging of the delegated powers, but of those that are reserved; and to resist the former, when they encroach upon the latter. I will pause to illustrate this point.

All must admit that there are delegated and reserved powers, and that the powers reserved are reserved to the States respectively. The powers, then, of the system are divided between the General and the State Governments; and the point immediately under consideration is, whether a State has any right to judge as to the extent of its reserved powers, and to defend them against the encroachments of the General Government. ....

.....What, then, is meant by a division of power? I cannot conceive of a division, without giving an equal right to each to judge of the extent of the power allotted to each. Such right I hold to be essential to the existence of a division; and that, to give to either party the conclusive right of judging, not only of the share allotted to it, but of that allotted to the other, is to annul the division, and to confer the whole power on the party vested with such right.

But it is contended that the constitution has conferred on the Supreme Court the right of judging between the States and the General Government. Those who make this objection, overlook, I conceive, an important provision of the constitution. By turning to the 10th amended article, it will be seen that the reservation of power to the States is not only against the power, delegated to Congress, but against the United States themselves; and extends, of course, as well to the judiciary as to the other departments of the Government. ....The reservation of powers to the States is, as I have said, against the whole; and is as full against the judicial as it is against the executive and legislative departments of the Government. It cannot be claimed for the one without claiming it for the whole; and without, in fact, annulling this important provision of the constitution.

Against this, as it appears to me, conclusive view of the



subject, it has been urged that this power is expressly conferred on the Supreme Court by that portion of the constitution which provides that the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority. I believe the assertion to be utterly destitute of any foundation. It obviously is the intention of the constitution simply to make the judicial power commensurate with the law-making and treaty-making powers; and to vest it with the right of applying the constitution, the laws, and the treaties, to the cases which might arise under them; and not to make it the judge of the constitution, the laws, and the treaties themselves. . . . . But it will be asked how the court obtained the power to pronounce a law or treaty unconstitutional, when it comes in conflict with that instrument. I do not deny that it possesses the right; but I can by no means concede that it was derived from the constitution. It had its origin in the necessity of the case. Where there are two or more rules established, one from a higher, the other from a lower authority, which may come into conflict in applying them to a particular case, the judge cannot avoid pronouncing in favor of the superior against the inferior. It is from this necessity, and this alone, that the power which is now set up to overrule the rights of the States against an express provision of the constitution was derived. It had no other origin. That I have traced it to its true source, will be manifest from the fact that it is a power which, so far from being conferred exclusively on the Supreme Court, as is insisted, belongs to the every court—inferior or superior—State and General—and even to foreign courts. . . . .

The people of Carolina believe that the Union is a union of States, and not of individuals; that it was formed by the States, and that the citizens of the several States were bound to it through the acts of their several States; that each State ratified the Constitution for itself, and that it was only by such ratification of a State that any obligation was imposed upon its citizens. Thus believing, it is the opinion of the people of Carolina that it belongs to the State which has imposed the obligation to declare, in the last resort, the extent of this obligation, as far as her citizens are concerned;

and this upon the plain principles which exist in all analogous cases of compact between sovereign bodies. On this principle the people of the State, acting in their sovereign capacity in convention, precisely as they did in the adoption of their own and the federal constitution, have declared, by the ordinance, that the acts of Congress which imposed duties under the authority to lay imposts, were acts not for revenue, as intended by the Constitution, but for protection, and therefore null and void. The ordinance thus enacted by the people of the State themselves, acting as a sovereign community, is as obligatory on the citizens of the State as any portion of the Constitution.....

The very point at issue between the two parties there is, whether nullification is a peaceful and an efficient remedy against an unconstitutional act of the General Government, and may be asserted, as such, through the State tribunals...

Is this a federal union? a union of States, as distinct from that of individuals? Is the sovereignty in the several States, or in the American people in the aggregate? The very language which we are compelled to use when speaking of our political institutions, affords proof conclusive as to its real character. The terms union, federal, united, all imply a combination of sovereignties, a confederation of States. They never apply to an association of individuals. Who ever heard of the United State of New-York, of Massachusetts, or of Virginia? Who ever heard the term federal or union applied to the aggregation of individuals into one community? Nor is the other point less clear—that the sovereignty is in the several States, and that our system is a union of twenty-four sovereign powers, under a constitutional compact, and not of a divided sovereignty between the States severally and the United States? In spite of all that has been said, I maintain that sovereignty is in its nature indivisible. It is the supreme power in a State, and we might just as well speak of half a square, or half of a triangle, as of half a sovereignty. It is a gross error to confound the *exercise* of sovereign powers with *sovereignty* itself, or the *delegation* of such powers with the *surrender* of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with such limitations as he may impose; but to sur-

render any portion of his sovereignty to another is to annihilate the whole.....

.....As great as these objections are, they become insignificant in the provisions of a bill which, by a single blow—by treating the States as a mere lawless mass of individuals—prostrates all the barriers of the constitution. I will pass over the minor considerations, and proceed directly to the great point. This bill proceeds on the ground that the entire sovereignty of this country belongs to the American people, as forming one great community, and regards the States as mere fractions or counties, and not as integral parts of the Union; having no more right to resist the encroachments of the Government than a county has to resist the authority of a State; and treating such resistance as the lawless acts of so many individuals, without possessing sovereignty or political rights.....

In the same spirit, we are told that the Union must be preserved, without regard to the means. And how is it proposed to preserve the Union? By force! Does any man in his senses believe that this beautiful structure—this harmonious aggregate of States, produced by the joint consent of all—can be preserved by force? Its very introduction will be certain destruction to this Federal Union. No, no. You cannot keep the States united in their constitutional and federal bonds by force. Force may, indeed, hold the parts together, but such union would be the bond between master and slave—a union of exaction on one side and of unqualified *obedience* on the other..... Has reason fled from our borders? Have we ceased to reflect? It is madness to suppose that the Union can be preserved by force. I tell you plainly, that the bill, should it pass, cannot be enforced. It will prove only a blot upon your statute-book, a reproach to the year, and a disgrace to the American Senate. I repeat, it will not be executed; it will rouse the dormant spirit of the people, and open their eyes to the approach of despotism.....

But to return to the point immediately under consideration. I know that it is not only the opinion of a large majority of our country, but it may be said to be the opinion of the age, that the very beau ideal of a perfect government is the government of the majority, acting through a repre-

sentative body, without check or limitation on its power; yet, if we may test this theory by experience and reason, we shall find that, so far from being perfect, the necessary tendency of all governments, based upon the will of an absolute majority, without constitutional check or limitation of power, is to faction, corruption, anarchy, and despotism; and this, whether the will of the majority be expressed directly through an assembly of the people themselves, or by their representatives. I know that, in venturing this assertion, I utter what is unpopular both within and without these walls; but where truth and liberty are concerned, such considerations should not be regarded. I will place the decision of this point on the fact that no government of the kind, among the many attempts which have been made, has ever endured for a single generation, but, on the contrary has invariably experienced the fate which I have assigned to it. ....

.....To understand what our Government is, we must look to the constitution, which is the basis of the system. I do not intend to enter into any minute examination of the origin and source of its powers: it is sufficient for my purposes to state, what I do fearlessly, that it derived its power from the people of the separate States, each ratifying by itself, each binding itself by its own separate majority, through its separate convention,—the concurrence of the majorities of the several States forming the constitution;—thus taking the sense of the whole by that of the several parts, representing the various interests of the entire community. It was this concurring and perfect majority which formed the constitution, and not that majority which would consider the American people as a single community, and which, instead of representing fairly and fully the interests of the whole, would but represent, as has been stated, the interests of the stronger section. ....

In administering the delegated powers, the constitution provides, very properly, in order to give promptitude and efficiency, that the Government shall be organized upon the principle of the absolute majority, or, rather, of two absolute majorities combined: a majority of the States considered as bodies politic, which prevails in this body; and a majority of the people of the States, estimated in federal

numbers, in the other House of Congress. A combination of the two prevails in the choice of the President, and, of course, in the appointment of Judges, they being nominated by the President and confirmed by the Senate. It is thus that the concurring and the absolute majorities are combined in one complex system: the one in forming the constitution, and the other in making and executing the laws; thus beautifully blending the moderation, justice, and equity of the former, and more perfect majority, with the promptness and energy of the latter, but less perfect.....

In estimating the operation of this principle in our system, which depends, as I have stated, on the right of interposition on the part of a State, we must not omit to take into consideration the amending power, by which new powers may be granted, or any derangement of the system corrected, by the concurring assent of three-fourths of the States; and thus, in the same degree, strengthening the power of repairing any derangement occasioned by the eccentric action of a State. In fact, the power of interposition, fairly understood, may be considered in the light of an appeal against the usurpations of the General Government, the joint agent of all the States, to the States themselves—to be decided under the amending power, by the voice of three-fourths of the States, as the highest power known under the system.....—JOHN C. CALHOUN, *Works*, II, 198—260 *passim*.

### 7—1833. Feb. 16. Webster's Reply to Calhoun.

.....The first two resolutions of the honorable member affirm these propositions, viz:—

1. That the political system under which we live, and under which Congress is now assembled, is a *compact*, to which the people of the several States, as separate and sovereign communities, are the *parties*.

2. That these sovereign parties have a right to judge, each for itself, of an alleged violation of the Constitution by Congress; and, in case of such violation, to choose, each for itself, its own mode and measure of redress.

It is true, Sir, that the honorable member calls this a "constitutional" compact; but still he affirms it to be a com-

pact between sovereign States. What precise meaning then, does he attach to the term *constitutional*? When applied to compacts between sovereign States the term *constitutional* affixes to the word *compact* no definite idea.....

.....Sir, I must say to the honorable gentleman, that, in our American political grammar, CONSTITUTION is a noun substantive; it imparts a distinct and clear idea of itself; and it is not to lose its importance and dignity, it is not to be turned into a poor, ambiguous, senseless, unmeaning adjective, for the purpose of accommodating any new set of political notions.....

The first resolution declares that the people of the several States "*acceded*" to the Constitution, or to the constitutional compact, as it is called. This word "*accede*," not found either in the Constitution itself, or in the ratification of it by any one of the States, has been chosen for use here, doubtless, not without a well considered purpose.

The natural converse of *accession* is *secession*; and, therefore, when it is stated that the people of the States acceded to the union, it may be more plausibly argued that they may secede from it. If, in adopting the Constitution, nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. But the term is wholly out of place..... Inasmuch as they were already in union, they did not speak of *acceding* to the new Articles of Confederation, but of *ratifying* and *confirming* them.....

Therefore, Sir, since any State, before she can prove her right to dissolve the Union, must show her authority to undo what has been done, no State is at liberty to *secede*, on the ground that she and the other States have done nothing but *accede*. She must show that she has a right to *reverse* what has been *ordained*, to *unsettle* and *overthrow* what has been *established*, to *reject* what the people have *adopted*, and to *break up* what they have *ratified*: because these are the terms which express the transactions which have actually taken place. In other words, she must show her right to make a revolution.....

The Constitution does not provide for events which must be preceded by its own destruction. Secession, therefore, since it must bring these consequences with it, is REVOLU-

TIONARY, and NULLIFICATION is equally REVOLUTIONARY. What is revolution? Why, Sir, that is revolution which overturns, or controls, or successfully resists the existing public authority; that which arrests the exercise of the supreme power; that which introduces a new paramount authority into the rule of the State. Now, Sir, this is the precise object of nullification. It attempts to supersede the supreme legislative authority. It arrests the arm of the executive magistrate. It interrupts the exercise of the accustomed judicial power. Under the name of an ordinance, it declares null and void, within the State, all the revenue laws of the United States. Is not this revolutionary? Sir, so soon as this ordinance shall be carried into effect, *a revolution* will have commenced in South Carolina. She will have thrown off the authority to which her citizens have heretofore been subject. She will have declared her own opinions and her own will to be above the laws and above the power of those who are intrusted with their administration. If she makes good these declarations, she is revolutionized. . . . .

Mr. President, the alleged right of a State to decide constitutional questions for herself necessarily leads to force, because other States must have the same right, and because different States will decide differently; and when these questions arise between States, if there be no superior power, they can be decided only by the law of force. On entering into the Union the people of each State gave up a part of their own power to make laws for themselves, in consideration that, as to common objects, they should have a part in making laws for other States. In other words, the people of all the States agreed to create a common government to be conducted by common counsels. . . . .

Such, Sir, are the inevitable results of this doctrine. Beginning with the original error, that the Constitution of the United States is nothing but a compact between sovereign States; asserting, in the next step, that each State has a right to be its own sole judge of the extent of its own obligations, and consequently of the constitutionality of laws of Congress; and, in the next, that it may oppose whatever it sees fit to declare unconstitutional, and that it decides for itself on the mode and measure of redress,—the argument arrives at once at the conclusion, that what a State dissents

from, it may nullify ; what it opposes, it may oppose by force ; what it decides for itself, it may execute by its own power ; and that, in short, it is itself supreme over the legislation of Congress, and supreme over the decisions of the national judicature ; supreme over the constitution of the country, supreme over the supreme law of the land. However it seeks to protect itself against these plain inferences, by saying that an unconstitutional law is no law, and that it only opposes such laws as are unconstitutional, yet this does not in the slightest degree vary the result ; since it insists on deciding this question for itself ; and, in opposition to reason and argument, in opposition to practice and experience, in opposition to the judgment of others, having an equal right to judge, it says, only, " Such is my opinion, and my opinion shall be my law, and I will support it by my own strong hand. I denounce the law ; I declare it unconstitutional ; that is enough ; it shall not be executed. Men in arms are ready to resist its execution. An attempt to enforce it shall cover the land with blood. Elsewhere it may be binding ; but here it is trampled under foot."

This, Sir, is practical nullification.

And now, Sir, against all these theories and opinions, I maintain,—

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities ; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority has power to dissolve these relations ; that nothing can dissolve them but revolution ; and that, consequently, there can be no such thing as secession without revolution.

3. That there is a supreme law consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties ; and that, in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret, this supreme law so often as it has occasion to pass acts of legislation ; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.



4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, on the ground that, in her opinion, such law is unconstitutional, is a direct usurpation on the just powers of the general government, and on the equal rights of other States ; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

Whether the Constitution be a compact between States in their sovereign capacities, is a question which must be mainly argued from what is contained in the instrument itself. . . . . It declares itself a Constitution. What is a *Constitution* ? Certainly not a league, compact, or confederacy, but a *fundamental law*. . . . .

It appears to me, Mr. President, that the plainest account of the establishment of this government presents the most just and philosophical view of its foundation. The people of the several States had their separate State governments ; and between the States there also existed a Confederation. With this condition of things the people were not satisfied, as the Confederation had been found not to fulfill its intended objects. It was *proposed*, therefore, to erect a new, common government, which should possess certain definite powers, such as regarded the prosperity of the people of all the States, and to be formed upon the general model of American constitutions. This proposal was assented to, and an instrument was presented to the people of the several States for their consideration. They approved it, and agreed to adopt it, as a Constitution. They executed that agreement ; they adopted the Constitution as a Constitution, and henceforth it must stand as a Constitution until it shall be altogether destroyed. . . . .

The truth is, Mr. President, and no ingenuity of argument, no subtilty of distinction can evade it, that, as to certain purposes, the people of the United States are one people. They are one in making war, and one in making peace ; they are one in regulating commerce, and one in laying duties of imposts. The very end and purpose of the Constitution was, to make them one people in these particulars ; and it has effectually accomplished its object. . . . .

But, sir, let us go to the actual formation of the Constitution, let us open the journal of the Convention itself, and

we shall see that the very first resolution which the Convention adopted, was, "THAT A NATIONAL GOVERNMENT OUGHT TO BE ESTABLISHED, CONSISTING OF A SUPREME LEGISLATURE, JUDICIARY, AND EXECUTIVE."

This itself completely negatives all idea of league, and compact, and confederation. Terms could not be chosen more fit to express an intention to establish a national government, and to banish for ever all notion of a compact between sovereign States . . . . .

Among all the other ratifications, there is not one which speaks of the Constitution as a compact between States. Those of Massachusetts and New Hampshire express the transaction, in my opinion, with sufficient accuracy. They recognize the Divine goodness "in affording THE PEOPLE OF THE UNITED STATES an opportunity of entering into an explicit and solemn compact with each other, *by assenting to and ratifying a new Constitution.*" You will observe, Sir, that it is the PEOPLE, and not the States, who have entered into this compact; and it is the PEOPLE of all the United States. . . . .

Finally, sir, how can any man get over the words of the Constitution itself?—"We, the people of the United States, do ordain and establish this Constitution." These words must cease to be a part of the Constitution, they must be obliterated from the parchment on which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States.

The second proposition, Sir, which I propose to maintain is, that no State authority can dissolve the relations subsisting between the government of the United States and individuals; that nothing can dissolve these relations but revolution; and that, therefore, there can be no such thing as *secession* without revolution. All this follows, as it seems to me, as a just consequence, if it be first proved that the Constitution of the United States is a government proper, owing protection to individuals, and entitled to their obedience.

The people, Sir, in every State, live under two governments. They owe obedience to both. These governments,

though distinct, are not adverse. Each has its separate sphere, and its peculiar powers and duties. It is not a contest between two sovereigns for the same power, like the wars of rival houses in England; nor is it a dispute between a government *de facto* and a government *de jure*. It is the case of a division of powers between two governments, made by the people, to whom both are responsible. Neither can dispense with the duty which individuals owe to the other; neither can call itself master of the other: the people are masters of both.....

In the next place, Mr. President, I contend that there is a supreme law of the land, consisting of the Constitution, acts of Congress passed in pursuance of it, and the public treaties. This will not be denied, because such are the very words of the Constitution. But I contend, further, that it rightfully belongs to Congress, and to the courts of the United States, to settle the construction of this supreme law, in doubtful cases. This is denied; and here arises the great practical question, *Who is to construe finally the Constitution of the United States?*.....

And in regard, Sir, to the judiciary, the Constitution is still more express and emphatic. It declares that the judicial power shall extend to all *cases* in law or equity arising under the Constitution, laws of the United States, and treaties; that there shall be *one* Supreme Court, and that this Supreme Court shall have appellate jurisdiction of all these cases, subject to such exceptions as Congress may make. It is impossible to escape from the generality of these words. If a case arises under the Constitution, that is, if a case arises depending on the construction of the Constitution, the judicial power of the United States extends to it. It reaches *the case, the question*; it attaches the power of the national judicature to the *case* itself, in whatever court it may arise or exist; and in this *case* the Supreme Court has appellate jurisdiction over all courts whatever. No language could provide with more effect and precision than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court.....

Sir, those who espouse the doctrines of nullification reject, as it seems to me, the first great principle of all republican liberty; that is, that the majority *must* govern. In matters of

common concern, the judgment of a majority *must* stand as a judgment of the whole. This is a law imposed upon us by the absolute necessity of the case ; and if we do not act upon it, there is no possibility of maintaining any government but despotism. We hear loud and repeated denunciations against what is called *majority government*. It is declared, with much warmth, that a majority government cannot be maintained in the United States. What, then, do gentlemen wish ? Do they wish to establish a *minority* government ? Do they wish to subject the will of the many to the will of the few ? The honorable gentleman from South Carolina has spoken of absolute majorities and majorities concurrent ; language wholly unknown to our Constitution, and to which it is not easy to affix definite ideas. As far as I understand it, it would teach us that the absolute majority may be found in Congress, but the majority concurrent must be looked for in the States ; that is to say, Sir, stripping the matter of this novelty of phrase, that the dissent of one or more States, as States, renders void the decision of a majority of Congress, so far as that State is concerned. And so this doctrine, running but a short career, like other dogmas of the day, terminates in nullification.—DANIEL WEBSTER, *Works*, III., 451-487 *passim*.

### 8—1833, Feb. 26. Calhoun's Reply to Webster.

.....“ *Resolved*, That the people of the several States composing these United States are united as parties to a constitutional compact, to which the people of each State acceded as a separate and sovereign community, each binding itself by its own particular ratification ; and that the Union, of which the said compact is the bond, is a Union *between the States* ratifying the same.

“ *Resolved*, That the people of the several States thus united by the constitutional compact, in forming that instrument, and in creating a General Government to carry into effect the objects for which it was formed, delegated to that Government, for that purpose, certain definite powers, to be exercised jointly, reserving, at the same time, each State to itself, the residuary mass of powers, to be exercised by its own separate government ; and that, whenever the General

Government assumes the exercise of powers not delegated by the compact, its acts are unauthorized, void, and of no effect; and that the said Government is not made the final judge of the powers delegated to it, since that would make its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among sovereign parties, without any common judge, each has an equal right to judge for itself, as well of the infraction, as of the mode and measure of redress.

*“Resolved,* That the assertions that the people of these United States, taken collectively as individuals, are now, or ever have been, united on the principle of the social compact, and, as such, are now formed into one nation or people, or that they have ever been so united, in any one stage of their political existence; that the people of the several States composing the Union have not, as members thereof, retained their sovereignty; that the allegiance of their citizens has been transferred to the General Government; that they have parted with the right of punishing treason through their respective State Governments; and that they have not the right of judging, in the last resort, as to the extent of powers reserved, and, of consequence, of those delegated, are not only without foundation in truth, but are contrary to the most certain and plain historical facts, and the clearest deductions of reason; and that all exercise of power on the part of the General Government, or any of its departments, deriving authority from such erroneous assumptions, must of necessity be unconstitutional—must tend directly and inevitably to subvert the sovereignty of the States—to destroy the federal character of the Union, and to rear on its ruins a consolidated government, without constitutional check or limitation, which must necessarily terminate in the loss of liberty itself.”.....

I have now established, I hope, beyond the power of controversy, every allegation contained in the first resolution—that the constitution is a compact formed by the people of the several States, as distinct political communities, and subsisting and binding between the States in the same character; which brings me to the consideration of the consequences which may be fairly deduced, in reference to the character of our political system, from these established facts.

The first, and most important is, they conclusively establish that ours is a federal system—a system of States arranged in a Federal Union, each retaining its distinct existence and sovereignty. Ours has every attribute which belongs to a federative system. It is founded on compact; it is formed by sovereign communities, and is binding between them in their sovereign capacity. ....

If we compare our present system with the old confederation, which all acknowledge to have been *federal* in its character, we shall find that it possesses all the attributes which belong to that form of government as fully and completely as that did. In fact, *in this particular*, there is but a single difference, and that not essential, as regards the point immediately under consideration, though very important in other respects. The confederation was the act of the State governments, and formed a union of governments. The present Constitution is the act of the States themselves, or, which is the same thing, of the people of the several States, and forms a union of them as sovereign communities. The States, previous to the adoption of the Constitution, were as separate and distinct political bodies as the governments which represented them, and there is nothing in the nature of things to prevent them from uniting under a compact, in a federal union, without being blended in one mass, any more than uniting the governments themselves, in like manner, without merging them in a single government. ....

The Senator dwelt much on the point that the present system is a constitution and a government, in contradistinction to the old confederation, with a view of proving that the constitution was not a compact. Now, I concede to the Senator that our present system is a constitution and a government; and that the former, the old confederation, was not a constitution or government. Not, however, for the reason which he assigned, that the former was a compact, and the latter not, but from the difference of the origin from which the two compacts are derived. According to our American conception, the people alone can form constitutions or governments, and not their agents. It is this difference, and this alone, which makes the distinction. Had the old confederation been the act of the people of the several States, and not of their governments, that instrument, im-

perfect as it was, would have been a constitution, and the agency which it created to execute its powers, a government. ....

.....Where does sovereignty reside? If I have succeeded in establishing the fact that ours is a federal system, as I conceive I conclusively have, that fact of itself determines the question which I have proposed. It is of the very essence of such a system, that the sovereignty is in the parts, and not in the whole; or, to use the language of Mr. Palgrave, the parts are the units in such a system, and the whole the multiple; and not the whole the unit and the parts the fractions. Ours, then, is a government of twenty-four sovereignties, united by a constitutional compact, for the purpose of exercising certain powers through a common government as their joint agent, and not a union of the twenty-four sovereignties into one, which, according to the language of the Virginia Resolutions, already cited, would form a consolidation. ....

Another consequence is equally clear, that, whatever modifications were made in the condition of the States under the present Constitution, they extend only to the exercise of their powers by compact, and not to the sovereignty itself, and are such as sovereigns are competent to make: it being a conceded point, that it is competent to them to stipulate to exercise their powers in a particular manner, or to abstain altogether from their exercise, or to delegate them to agents, without in any degree impairing sovereignty itself. The plain state of the facts, as regards our government is, that these States have agreed by compact to exercise their sovereign powers jointly, as already stated; and that, for this purpose, they have ratified the compact in their sovereign capacity, thereby making it the constitution of each State, in nowise distinguished from their own separate constitutions, but in the superadded obligations of compact—of faith mutually pledged to each other. In this compact, they have stipulated, among other things, that it may be amended by three-fourths of the States: that is, they have conceded to each other by compact the right to add new powers or to subtract old, by the consent of that proportion of the States, without requiring, as otherwise would have been the case, the consent of all: a modification no more incon-

sistent, as has been supposed, with their sovereignty, than any other contained in the compact. In fact, the provision to which I allude furnishes strong evidence that the sovereignty is, as I contend, in the States severally, as the amendments are effected, not by any one three-fourths, but by any three-fourths of the States, indicating that the sovereignty is in each of the States.

If these views be correct, it follows, as a matter of course, that the allegiance of the people is to their several States, and that treason consists in resistance to the joint authority of the *States* united, not, as has been absurdly contended, in resistance to the *Government* of the United States, which, by the provision of the Constitution, has only the right of punishing.....

.....no one has ever denied that the constitution, and the laws made in *pursuance* of it, are of paramount authority. But it is equally undeniable that laws *not* made in pursuance are not only not of paramount authority, but are of no authority whatever, being of themselves null and void; which presents the question, Who are to judge whether the laws be or be not pursuant to the constitution? and thus the difficulty, instead of being taken away, is removed but one step further back.....

.....I would ask the Senator upon what principle can he concede this extensive power to the legislative and judicial departments, and withhold it entirely from the Executive? If one has the right it cannot be withheld from the other. I would also ask him on what principle—if the departments of the General Government are to possess the right of judging, finally and conclusively, of their respective powers—on what principle can the same right be withheld from the State Governments, which, as well as the General Government, properly considered, are but departments of the same general system, and form together, properly speaking, but one government?.....

.....I would further tell the Senator, that, if this right be withheld from the State Governments; if this restraining influence, by which the General Government is confined to its proper sphere, be withdrawn, then that department of the Government from which he has withheld the right of judging of its own powers (the Executive) will, so



far from being excluded, become the *sole* interpreter of the powers of the Government. It is the *armed* interpreter, with powers to execute its own construction, and without the aid of which the construction of the other departments will be impotent.

.....To prove that ours is a consolidated government, and that there is an immediate connection between the Government and the citizen, he relies on the fact that the laws act directly on individuals. That such is the case I will not deny; but I am very far from conceding the point that it affords the decisive proof, or even any proof at all, of the position which the Senator wishes to maintain. I hold it to be perfectly within the competency of two or more States, to subject their citizens, in certain cases, to the direct action of each other, without surrendering or impairing their sovereignty.....

I, for my part, have no fear of any dangerous conflict, under the fullest acknowledgment of State sovereignty: the very fact that the States may interpose will produce moderation and justice. The General Government will abstain from the exercise of any power in which they may suppose three-fourths of the States will not sustain them; while, on the other hand, the States will not interpose but on the conviction that they will be supported by one-fourth of their co-States. Moderation and justice will produce confidence, attachment, and patriotism; and these, in turn, will offer most powerful barriers against the excess of conflicts between the States and the General Government.....—JOHN C. CALHOUN, *Works*, II., 262-304.

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NO. 31.

JANUARY, 1901.

EXTRACTS FROM JOHN WINTHROP'S  
HISTORY OF NEW ENGLAND.

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# American History Leaflets

## COLONIAL AND CONSTITUTIONAL.

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No. 31. JANUARY, 1901.

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### EXTRACTS FROM JOHN WINTHROP'S HISTORY OF NEW ENGLAND.

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JOHN WINTHROP was the first governor of the Massachusetts Bay Company to reside in the colony. His *History of New England*, so far as it describes matters which came under his own eyes, is a source of importance second only to the *Records of the Massachusetts Bay Company*. Indeed Winthrop systematically supplements those records. This number contains some of the lighter portions of Winthrop's narrative describing the voyage to the colony and the settlement of the towns on Massachusetts Bay. There are also a few passages dealing with constitutional matters and a page or two on the expulsion of Roger Williams. Winsor's *Memorial History of Boston* and C. F. Adams's *Three Episodes of Massachusetts History* will serve to elucidate this narrative. For other references, see Channing and Hart's *Guide to the Study of American History*, § 117.

ANNO DOMINI, 1630, MARCH 29, MONDAY.

Easter Monday.] RIDING at the Cowes, near the Isle of Wight, in the Arbella, a ship of three hundred and fifty tons, whereof Capt. Peter Milborne was master, being manned with fifty-two seamen and twenty-eight pieces of ordnance, (the wind coming to the N. and by W. the evening before,) in the morning there came aboard us Mr. Cradock, the late governour, and the masters of his two ships, Capt. John Lowe, master of the Ambrose, and Mr. Nicholas Hurlston, master of the Jewel and Mr. Thomas Beecher, master of the Talbot, (which three

END



ships rode then by us — the Charles, the Mayflower, the William and Francis, the Hopewell, the Whale, the Success and the Trial being still at Hampton and not ready,) when, upon conference, it was agreed, that (in regard it was uncertain when the rest of the fleet would be ready) these four ships should consort together; the Arbella to be Admiral, the Talbot Vice-Admiral, the Ambrose Rear-Admiral, and the Jewel a Captain; and accordingly articles of consortship were drawn between the said captains and masters; whereupon Mr. Cradock took leave of us, and our captain gave him a farewell with four or five shot.

About ten of the clock we weighed anchor and set sail, with the wind at N. and came to an anchor again over against Yarmouth, and the Talbot weighed likewise, and came and anchored by us. Here we met with a ship of Hampton, called the Plantation, newly come from Virginia. Our captain saluted her, and she us again; and the master, one Mr. [blank] *Graves*, came on board our ship, and stayed with us about two or three hours, and in the mean time his ship came to an anchor by us.

Tuesday, 30.] In the morning, about ten of the clock, the wind being come to the W. with fair weather, we weighed and rode nearer Yarmouth. When we came before the town, the castle put forth a flag; our captain saluted them, and they answered us again. The Talbot, which rode farther off, saluted the castle also.

Here we saw, close by the shore of the Isle of Wight, a Dutch ship of one thousand tons, which, being bound to the East Indies, about two years since, in passing through the Needles, struck upon a rock, and being forced to run ashore to save her men, could never be weighed since, although she lies a great height above the water, and yet she hath some men aboard her.

✓Wednesday, 31.] The wind continued W. and S. W. with rain. Our captain and some of our company went to Yarmouth for supply of wood and other provisions; (our captain was still careful to fill our empty casks with water.)

Thursday, April 1.] The wind continued very strong at W. and by S. with much rain.

Friday, 2.] We kept a fast aboard our ship and the Talbot. The wind continued still very high at W. and S. and rainy. In the time of our fast, two of our landmen pierced a rundlet of strong water, and stole some of it, for which we laid them in bolts all the night, and the next morning the principal was openly whipped, and both kept with bread and water that day.

Saturday, 3.] The wind continued still at W. and with continual storms and rain.

Sunday, 4.] Fair, clear weather. In the morning the wind W. and by N. but in the afternoon S. S. W. This evening the Talbot weighed and went back to the Cowes, because her anchor would not hold here, the tide set with so strong a race.

Monday, 5.] The wind still W. and S. with fair weather. A maid of Sir Richard Saltonstall fell down at the grating by the cook room, but the carpenter's man, who occasioned her fall unwittingly, caught hold of her with incredible nimbleness, and saved her; otherwise she had fallen into the hold.

Tuesday, 6.] Capt. Burleigh, captain of Yarmouth castle, a grave, comely gentleman, and of great age, came aboard us and stayed breakfast, and, offering us much courtesy, he departed, our captain giving him four shot out of the forecastle for his farewell. He was an old sea captain in Queen Elizabeth's time, and, being taken prisoner at sea, was kept prisoner in Spain three years. Himself and three of his sons were captains in Roe's voyage.

The wind was now come about to N. E. with very fair weather.

In the afternoon Mr. Cradock came aboard us, and told us, that the Talbot, Jewel and Ambrose, were fallen down into Stoke's Bay, intending to take their way by St. Helen's Point, and that they desired we would come back to them. Hereupon we came to council, and wrote unto them to take the first opportunity of the wind to fall down to us, and Mr. Cradock presently went back to them, our captain giving him three shot out of the steerage for a farewell.

Our captain called over our landmen, and tried them at their muskets, and such as were good shot among them were enrolled to serve in the ship, if occasion should be.

The lady Arbella and the gentlewomen, and Mr. Johnson and some others went on shore to refresh themselves.

Wednesday, 7.] Fair weather, the wind easterly, in the morning a small gale, but in the afternoon it came about to the south. This afternoon our other consorts came up to us, and about ten or twelve Flemings, and all anchored by us, and the masters of the Jewel and of the Ambrose came aboard us, and our captain and they went on shore.

Towards night there came from the W. a Fleming, a small man of war, with a Brazil man which he had taken prize, and came to anchor by us.

Thursday, 8.] About six in the morning (the wind being E. and N. and fair weather) we weighed anchor and set sail, and before ten we gat through the Needles, having so little wind as we had much to do to stem the tide, so as the rest of our fleet (we being nine in all, whereof some were small ships, which were bound for Newfoundland) could not get out all then till the ebb. In the afternoon the wind came S. and W. and we were becalmed, so as being not able to get above three or four leagues from the Needles, our captain tacked about, and putting his fore-sheets aback stays, he stayed for the rest of the fleet, and as they came by us we spake to them, and about eight in the evening we let fall an anchor, intending to stop till the ebb. But before ten at night the wind came about to the N. a good gale; so we put up a light in the poop, and weighed and set sail, and by daylight, Friday, 9, we were come to Portland; but the other ships being not able to hold up with us, we were forced to spare our mainsail, and went on with a merry gale. In the morning we descried from the top eight sail astern of us, (whom Capt. Lowe told us he had seen at Dunnose in the evening.) We supposing they might be Dunkirkers, our captain caused the gun room and gun deck to be cleared; all the hammocks were taken down, our ordnance loaded, and our powder chests and fireworks made ready, and our landmen quartered among the seamen, and twenty-five of them appointed for muskets, and every man written down for his quarter.

The wind continued N. [blank] with fair weather, and after noon it calmed, and we still saw those eight ships to stand towards us; having more wind than we, they came up apace, so as our captain and the masters of our consorts were more occasioned to think they might be Dunkirkers, (for we were told at Yarmouth, that there were ten sail of them waiting for us;) whereupon we all prepared to fight with them, and took down some cabins which were in the way of our ordnance, and out of every ship were thrown such bed matters as were subject to take fire, and we heaved out our long boats, and put up our waste cloths, and drew forth our men, and armed them with muskets and other weapons, and instruments for fireworks; and for an experiment our captain shot a ball of wild-fire fastened to an arrow out of a crossbow, which burnt in the water a good time. The lady Arbella and the other women and children were removed into the lower deck, that they

might be out of danger. All things being thus fitted, we went to prayer upon the upper deck. It was much to see how cheerful and comfortable all the company appeared; not a woman or child that shewed fear, though all did apprehend the danger to have been great, if things had proved as might well be expected, for there had been eight against four, and the least of the enemy's ships were reported to carry thirty brass pieces; but our trust was in the Lord of Hosts; and the courage of our captain, and his care and diligence, did much encourage us. It was now about one of the clock, and the fleet seemed to be within a league of us; therefore our captain, because he would shew he was not afraid of them, and that he might see the issue before night should overtake us, tacked about and stood to meet them, and when we came near we perceived them to be our friends—the Little Neptune, a ship of some twenty pieces of ordnance, and her two consorts, bound for the Straits; a ship of Flushing, and a Frenchman, and three other English ships bound for Canada and Newfoundland. So when we drew near, every ship (as they met) saluted each other, and the musketeers discharged their small shot; and so (God be praised) our fear and danger was turned into mirth and friendly entertainment. Our danger being thus over, we espied two boats on fishing in the channel; so every of our four ships manned out a skiff, and we bought of them great store of excellent fresh fish of divers sorts.

Saturday, 10.] The wind at E. and by N. a handsome gale with fair weather. By seven in the morning we were come over against Plimouth.

About noon the wind slacked, and we were come within sight of the Lizard, and towards night it grew very calm and a great fog, so as our ships made no way.

This afternoon Mr. Hurlston, the master of the Jewel came aboard our ship, and our captain went in his skiff aboard the Ambrose and the Neptune, of which one Mr. Andrew Cole was master. There he was told that the bark Warwick was taken by the Dunkirkers, for she came single out of the Downes about fourteen days since, intending to come to us to the Wight, but was never heard of since. She was a pretty ship of about eighty tons and ten pieces of ordnance, and was set out by Sir Ferdinando Gorges, Cap. Mason and others, for discovery of the great lake in New England, so to have intercepted the trade of beaver. The master of her was one Mr.

Weatherell, whose father was master of one of the cattle ships, which we left at Hampton.

This day two young men, falling at odds and fighting, contrary to the orders which we had published and set up in the ship, were adjudged to walk upon the deck till night with their hands bound behind them, which accordingly was executed; and another man, for using contemptuous speeches in our presence, was laid in bolts till he submitted himself and promised open confession of his offence.

I should have noted before, that the day we set sail from the Cowes, my son Henry Winthrop, went on shore with one of my servants to fetch an ox and ten wethers, which he had provided for our ship, and there went on shore with him Mr. Pelham and one of his servants. They sent the cattle aboard, but returned not themselves. About three days after my servant and a servant of Mr. Pelham's came to us to Yarmouth, and told us they were all coming to us in a boat the day before, but the wind was so strong against them, as they were forced on shore in the night, and the two servants came to Yarmouth by land, and so came on ship-board, but my son and Mr. Pelham (we heard) went back to the Cowes and so to Hampton. We expected them three or four days after, but they came not to us, so we have left them behind, and suppose they will come after in Mr. Goffe's ships. We were very sorry they had put themselves upon such inconvenience, when they were so well accommodated in our ship. This was not noted before, because we expected daily their return; and upon this occasion I must add here one observation, that we have many young gentlemen in our ship, who behave themselves well, and are conformable to all good orders.

About ten at night it cleared up with a fresh gale at N. and by W. so we stood on our course merrily.

Sunday, 11.] The wind at N. and by W. a very stiff gale.

About eight in the morning, being gotten past Scilly, and standing to the W. S. W. we met two small ships, which falling in among us, and the Admiral coming under our lee, we let him pass, but the Jewel and Ambrose, perceiving the other to be a Brazil man, and to take the wind of us, shot at them and made them stop and fall after us, and sent a skiff aboard them to know what they were. Our captain, fearing lest some mistake might arise, and lest they should take them for enemies which were friends, and so, through the unruliness of the mariners

some wrong might be done them, caused his skiff to be heaved out, and sent Mr. *Graves*, one of his mates and our pilot, (a discreet man,) to see how things were, who returned soon after, and brought with him the master of one of the ships and Mr. Lowe and Mr. Hurlston. When they were come aboard us, they agreed to send for the captain, who came and showed his commission from the Prince of Orange. In conclusion he proved to be a Dutchman, and his a man of war of Flushing, and the other ship was a prize he had taken laden with sugar and tobacco; so we sent them aboard their ships again, and held on our course. In this time (which hindered us five or six leagues) the *Jewel* and the *Ambrose* came foul of each other, so as we much feared the issue, but, through God's mercy, they came well off again, only the *Jewel* had her fore-sail torn, and one of her anchors broken. This occasion, and the sickness of our minister and people, put us all out of order this day, so as we could have no sermons.

Monday, 12.] The wind more large to the N. a stiff gale, with fair weather. In the afternoon less wind, and our people began to grow well again. Our children and others, that were sick, and lay groaning in the cabins, we fetched out, and having stretched a rope from the steerage to the mainmast, we made them stand, some of one side and some of the other, and sway it up and down till they were warm, and by this means they soon grew well and merry. . . . .

Wednesday, 14.] The wind S. W. rainy weather, in the morning. . . . .

This day the ship heaved and set more than before, yet we had but few sick, and of these such as came up upon the deck, and stirred themselves, were presently well again; therefore our captain set our children and young men to some harmless exercises, which the seamen were very active in, and did our people much good, though they would sometimes play the wags with them. Towards night we were forced to take in some sail to stay for the Vice-Admiral, which was near a league astern of us. . . . .

Thursday, 15.] The wind still at N. N. W. fair weather. . . . .

All this forenoon our Vice-Admiral was much to leeward of us; so after dinner we bare up towards her, and having fetched her up and spoken with her, the wind being come to S. W. we tacked about and steered our course N. N. W. lying as near the

wind as we could, and about four of the clock, with a stiff gale, we steered W. and by N. and at night the wind grew very strong, which put us on to the W. amain.

About ten at night the wind grew so high, and rain withal, that we were forced to take in our topsail, and having lowered our mainsail and foresail, the storm was so great as it split our foresail and tore it in pieces, and a knot of the sea washed our tub overboard, wherein our fish was a-watering. The storm still grew, and it was dark with clouds, (though otherwise moon-light,) so as (though it was the Jewel's turn to carry the light this night, yet) lest we should lose or go foul one of another, we hanged out a light upon our mizzen shrouds, and before midnight we lost sight of our Vice-Admiral.

Our captain, so soon as he had set the watch, at eight in the evening, called his men, and told them he feared we should have a storm, and therefore commanded them to be ready upon the deck, if occasion should be; and himself was up and down the decks all times of the night.

Friday, 16.] About four in the morning the wind slacked a little, yet it continued a great storm still, and though in the afternoon it blew not much wind, yet the sea was so high as it tossed us more than before, and we carried no more but our mainsail, yet our ship steered well with it, which few such ships could have done.

About four in the afternoon, the wind still W. and by S. and rainy, we put on a new foresail and hoisted it up, and stood N. N. W. All this day our Rear Admiral and the Jewel held up with us.

This night was very stormy.

All the time of the storm few of our people were sick, (except the women, who kept under hatches,) and there appeared no fear or dismayedness among them. . . . .

Saturday, [April] 17.] The wind S. W. very stormy and boisterous. All this time we bore no more sail but our mainsail and fore-sail, and we steered our course W. and by N. . . .

Lord's day, [June] 6.] The wind N. E. and after N. a good gale, but still foggy at times, and cold. We stood W. N. W. both to make Cape Sable, if we might, and also because of the current, which, near the west shore, sets to the S. that we might be the more clear from the southern shoals, viz. of Cape Cod.

About two in the afternoon we sounded and had ground at about eighty fathom, and the mist then breaking up, we saw the shore to the N. about five or six leagues off, and were (as we supposed) to the S. W. of Cape Sable, and in forty-three and a quarter. Towards night it calmed and was foggy again, and the wind came S. and by E. We tacked and stood W. and by N. intending to make land at Aquamenticus, being to the N. of the Isles of Shoals.

Monday, 7.] The wind S. About four in the morning we sounded and had ground at thirty fathom, and was somewhat calm; so we put our ship a-stays, and took, in less than two hours, with a few hooks, sixty-seven codfish, most of them very great fish, some a yard and a half long, and a yard in compass. This came very seasonably, for our salt fish was now spent, and we were taking care for victuals this day (being a fish day.)

After this we filled our sails, and stood W. N. W. with a small gale. We hoisted out a great boat to keep our sounding the better. The weather was now very cold. We sounded at eight, and had fifty fathom, and, being calm, we heaved out our hooks again, and took twenty-six cods; so we all feasted with fish this day. . . . At one of the clock we had a fresh gale at N. W. and very fair weather all that afternoon, and warm, but the wind failed soon.

All the night the wind was W. and by S. a stiff gale, which made us stand to and again, with small advantage.

Tuesday, 8.] The wind still W. and by S. fair weather, but close and cold. We stood N. N. W. with a stiff gale, and, about three in the afternoon, we had sight of land to the N. W. about ten leagues, which we supposed was the Isles of Monhegan, but it proved Mount Mansell. Then we tacked and stood W. S. W. We had now fair sun-shine weather, and so pleasant a sweet air as did much refresh us, and there came a smell off the shore like the smell of a garden.

There came a wild pigeon into our ship, and another small land bird.

Wednesday, 9.] In the morning the wind easterly, but grew presently calm. Now we had very fair weather, and warm. About noon the wind came to S. W.; so we stood W. N. W. With a handsome gale, and had the main land upon our star-board all that day, about eight or ten leagues off. It is very high land, lying in many hills very unequal. At night we saw many small islands, being low land, between us and the main,



about five or six leagues off us ; and about three leagues from us, towards the main, a small rock a little above water. At night we sounded and had soft oozy ground at sixty fathom ; so, the wind being now scant at W. we tacked again and stood S. S. W. We were now in forty-three and a half.— This high land, which we saw, we judged to be at the W. cape of the great bay, which goeth towards Port Royal, called Mount Desert or Mount Mansell, and no island, but part of the main. In the night the wind shifted off.

Thursday, 10.] In the morning the wind S. and by W. till five. In the morning a thick fog ; then it cleared up with fair weather, but somewhat close. After we had run some ten leagues W. and by S. we lost sight of the former land, but made other high land on our starboard, as far off as we could descry, but we lost it again.

The wind continued all this day at S. a stiff steady gale, yet we bare all our sails, and stood W. S. W. About four in the afternoon we made land on our starboard bow, call the Three 'Turks' Heads, being a ridge of three hills upon the main, whereof the southmost is the greatest. It lies near Aquamenticus. We descried also another hill, more northward, which lies by Cape Porpus. We saw also, ahead of us, some four leagues from shore, a small rock, not above a flight shot over, which hath a dangerous shoal to the E. and by S. of it, some two leagues in length. We kept our luff and weathered it, and left it on our starboard about two miles off. Towards night we might see the trees in all places very plainly, and a small hill to the southward of the 'Turks' Heads. All the rest of the land to the S. was plain low land. Here we had a fine fresh smell from shore. Then, lest we should not get clear of the ledge of rocks, which lie under water from within a flight shot of the said rock, (called Boone Isle,) which we had now brought N. E. from us, towards Pascataquac, we tacked and stood S. E. with a stiff gale at S. by W.

Friday, 11.] The wind still S. W. close weather. We stood to and again all this day within sight of Cape Ann. The Isles of Shoals were now within two leagues of us, and we saw a ship lie there at anchor, and five or six shallops under sail up and down.

We took many mackerels, and met a shallop, which stood from Cape Ann towards the Isles of Shoals, which belonged to some English fishermen.

Saturday, 12.] About four in the morning we were near our port. We shot off two pieces of ordnance, and sent our skiff to Mr. Peirce his ship (which lay in the harbour, and had been there [blank] days before.) About an hour after, Mr. Allerton came aboard us in a shallop as he was sailing to Pemaquid. As we stood towards the harbour, we saw another shallop coming to us; so we stood in to meet her, and passed through the narrow strait between Baker's Isle and Little Isle, and came to an anchor a little within the islands.

After Mr. Peirce came aboard us, and returned to fetch Mr. Endecott, who came to us about two of the clock, and with him Mr. Skelton and Capt. Levett. We that were of the assistants, and some other gentlemen, and some of the women, and our captain, returned with them to Nahumkeck, where we supped with a good venison pasty and good beer, and at night we returned to our ship, but some of the women stayed behind.

In the mean time most of our people went on shore upon the land of Cape Ann, which lay very near us, and gathered store of fine strawberries.

An Indian came aboard us and lay there all night.

Lord's day, 13.] In the morning, the sagamore of Agawam and one of his men came aboard our ship and stayed with us all day.

About two in the afternoon we descried the Jewel; so we manned out our skiff and wafted them in, and they went as near the harbour as the tide and wind would suffer.

Monday, 14.] In the morning early we weighed anchor, and the wind being against us, and the channel so narrow as we could not well turn in, we warped in our ship and came to an anchor in the inward harbour.

In the afternoon we went with most of our company on shore, and our captain gave us five pieces.

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Thursday, 17.] We went to Mattachusetts, to find out a place for our sitting down. We went up Mistick River about six miles.

We lay at Mr. Maverick's, and returned home on Saturday. As we came home, we came by Nataskott, and sent for Capt. Squib ashore — (he had brought the west-country people, viz. Mr. Ludlow, Mr. Rossiter, Mr. Maverick, &c. to the bay, who were set down at Mattapan,) — and ended a difference between

him and the passengers; whereupon he sent his boat to his ship, (the Mary and John,) and at our parting gave us five pieces. At our return we found the Ambrose in the harbour at Salem.

Thursday, July 1.] The Mayflower and the Whale arrived safe in Charlton harbour. Their passengers were all in health, but most of their cattle dead. . . .

Friday, 2.] The Talbot arrived there. She had lost fourteen passengers.

My son Henry Winthrop was drowned at Salem.

Saturday, 3.] The Hopewell, and William and Francis arrived.

Monday, 5.] The Trial arrived at Charlton, and the Charles at Salem.

Tuesday, 6.] The Success arrived. She had [blank] goats and lost [blank] of them, and many of her passengers were near starved, &c.

Wednesday, 7.] The Lyon went back to Salem.

Thursday, 8.] We kept a day of thanksgiving in all the plantations.

Thursday, August 18.] Capt. Endecott and — Gibson were married by the governour and Mr. Wilson.

Saturday, 20.] The French ship called the Gift came into the harbour at Charlton. She had been twelve weeks at sea, and lost one passenger and twelve goats; she delivered six.

Monday we kept a court.

Friday, 27.] We of the congregation kept a fast, and chose Mr. Wilson our teacher, and Mr. Nowell an elder, and Mr. Gager and Mr. Aspinwall, deacons. We used imposition of hands, but with this protestation by all, that it was only as a sign of election and confirmation, not of any intent that Mr. Wilson should renounce his ministry he received in England.

September 20.] Mr. Gager died.

30.] About two in the morning, Mr. Isaac Johnson died; his wife, the lady Arbella, of the house of Lincoln, being dead about one month before. He was a holy man, and wise, and died in sweet peace, leaving some part of his substance to the colony.

The wolves killed six calves at Salem, and they killed one wolf.

Thomas Morton adjudged to be imprisoned, till he were sent into England, and his house burnt down, for his many

injuries offered to the Indians, and other misdemeanours. Capt. Brook, master of the Gift, refused to carry him.

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*Finch* of Watertown had his wigwam burnt and all his goods. Billington executed at Plimouth for murdering one.

Mr. Phillips, the minister of Watertown, and others, had their hay burnt.

The wolves killed some wine at Saugus.

A cow died at Plimouth, and a goat at Boston, with eating Indian corn.

October 23.] Mr. Rossiter, one of the assistants, died.

25.] Mr. Colburn (who was chosen deacon by the congregation a week before) was invested by imposition of hands of the minister and elder.

The governour, upon consideration of the inconveniences which had grown in England by drinking one to another, restrained it at his own table, and wished others to do the like, so as it grew, by little and little, to disuse.

29.] The Handmaid arrived at Plimouth, having been twelve weeks at sea, and spent all her masts, and of twenty-eight cows she lost ten. She had about sixty passengers, who came all well; John Grant, master.

Mr. Goffe wrote to me, that his shipping this year had utterly undone him.

She brought out twenty-eight heifers, but brought but seventeen alive.

November 11.] The master came to Boston with Capt. Standish and two gentlemen passengers, who came to plant here, but having no testimony, we would not receive them.

10.] [blank] Firmin of Watertown had his wigwam burnt.

Divers had their hay-stacks burnt by burning the grass.

27.] Three of the governour's servants were from this day to the 1 of December abroad in his skiff among the islands, in bitter frost and snow, being kept from home by the N. W. wind, and without victuals. At length they gat to Mount Wollaston, and left their boat there, and came home by land. Laus Deo.

December 6.] The governour and most of the assistants, and others, met at Roxbury, and there agreed to build a town fortified upon the neck between that and Boston, and a committee was appointed to consider of all things requisite, &c.

14.] The committee met at Roxbury, and upon further consideration, for reasons, it was concluded, that we could not have a town in the place aforesaid : 1. Because men would be forced to keep two families. 2. There was no running water ; and if there were any springs, they would not suffice the town. 3. The most part of the people had built already, and would not be able to build again. So we agreed to meet at Watertown that day sen'night, and in the mean time other places should be viewed.

Capt. Neal and three other gentlemen came hither to us. He came in the bark Warwick this summer to Pascataqua, sent as governour there for Sir Ferdinando Gorges and others.

21.] We met again at Watertown, and there, upon view of a place a mile beneath the town, all agreed it a fit place for a fortified town, and we took time to consider further about it.

24.] Till this time there was (for the most part) fair, open weather, with gentle frosts in the night ; but this day the wind came N. W. very strong, and some snow withal, but so cold as some had their fingers frozen, and in danger to be lost. Three of the governour's servants, coming in a shallop from Mistick, were driven by the wind upon Noddle's Island, and forced to stay there all that night, without fire or food ; yet, through God's mercy, they came safe to Boston next day, but the fingers of two of them were blistered with cold, and one swooned when he came to the fire.

26.] The rivers were frozen up, and they of Charlton could not come to the sermon at Boston till the afternoon at high water.

Many of our cows and goats were forced to be still abroad for want of houses.

28.] Richard Garrett, a shoemaker of Boston, and one of the congregation there, with one of his daughters, a young maid, and four others, went towards Plimouth in a shallop, against the advice of his friends ; and about the Gurnett's Nose the wind overblew so much at N. W. as they were forced to come to a killock at twenty fathom, but their boat drave and shook out the stone, and they were put to sea, and the boat took in much water, which did freeze so hard as they could not free her ; so they gave themselves for lost, and, commending themselves to God, they disposed themselves to die ; but one of their company espying land near Cape Cod, they made shift to hoist up part of their sail, and, by God's special providence, were carried through the rocks to the shore, where some gat on

land, but some had their legs frozen into the ice, so as they were forced to be cut out. Being come on shore they kindled a fire, but, having no hatchet, they could get little wood, and were forced to lie in the open air all night, being extremely cold. In the morning two of their company went towards Plimouth, (supposing it had been within seven or eight miles, whereas it was near fifty miles from them.) By the way they met with two Indian squaws, who, coming home, told their husbands that they had met two Englishmen. They thinking (as it was) that they had been shipwrecked, made after them, and brought them back to their wigwam, and entertained them kindly; and one of them went with them the next day to Plimouth, and the other went to find out their boat and the rest of their company, which were seven miles off, and having found them, he help them what he could, and returned to his wigwam, and fetched a hatchet, and built them a wigwam and covered it, and gat them wood (for they were so weak and frozen, as they could not stir;) and Garrett died about two days after his landing; and the ground being so frozen as they could not dig his grave, the Indian hewed a hole about half a yard deep, with his hatchet, and having laid the corpse in it, he laid over it a great heap of wood to keep it from the wolves. By this time the governour of Plimouth had sent three men to them with provisions, who being come, and not able to launch their boat, (which with the strong N.W. wind was driven up to the high water mark,) the Indian returned to Plimouth and fetched three more; but before they came, they had launched their boat, and with a fair southerly wind were gotten to Plimouth, where another of their company died, his flesh being mortified with the frost; and the two who went towards Plimouth died also, one of them being not able to get thither, and the other had his feet so frozen as he died of it after. The girl escaped best, and one Harwood, a godly man of the congregation of Boston, lay long under the surgeon's hands; and it was above six weeks before they could get the boat from Plimouth; and in their return they were much distressed; yet their boat was very well manned, the want whereof before was the cause of their loss.

January [1630/31.] A house at Dorchester was burnt down.

February 11.] Mr. Freeman's house at Watertown was burned down, but, being in the day time, his goods were saved. . . . .

The poorer sort of people (who lay long in tents, etc.) were

much afflicted with the scurvy, and many died, especially at Boston and Charlestown ; but when this ship came and brought store of juice of lemons, many recovered speedily. . . . .

March 16.] About noon the chimney of Mr. Sharp's house in Boston took fire, (the splinters being not clayed at the top,) and taking the thatch burnt it down, and the wind being N. W. drove the fire to Mr. Colburn's house, being [blank] rods off, and burnt that down also, yet they saved most of their goods.

23.] Chickatabot came with his sannops and squaws, and presented the governour with a hogshhead of Indian corn. After they had all dined, and had each a small cup of sack and beer, and the men tobacco, he sent away all his men and women, (though the governour would have stayed them, in regard of the rain and thunder.) Himself and one squaw and one sannop stayed all night, and, being in English clothes, the governour set him at his own table, where he behaved himself as soberly, &c. as an Englishman. The next day after dinner he returned home, the governour giving him cheese and peas and a mug and some other small things.

26 [1631.] John Sagamore and James his brother, with divers sannops, came to the governour to desire his letter for recovery of twenty beaver skins, which one Watts in England had *forced* him of. The governour entertained them kindly, and gave him his letter with directions to Mr. Downing in England, &c.

The night before, alarm was given in divers of the plantations. It arose through the shooting off some pieces at Watertown, by occasion of a calf, which Sir Richard Saltonstall had lost ; and the soldiers were sent out with their pieces to try the wilderness from thence till they might find it.

29.] Sir Richard Saltonstall and his two daughters, and one of his younger sons, (his two eldest sons remained still in the country,) came down to Boston, and stayed that night at the governour's, and the next morning, by seven of the clock, accompanied with Mr. Peirce and others in two shallops, they departed to go to the ship riding at Salem. The governour gave them three drakes at their setting sail, the wind being N. W. a stiff gale and full sea. Mr. Sharp went away at the same time in another shallop. . . . .

[April] 27.] There came from Virginia into Salem a pin-nace of eighteen tons, laden with corn and tobacco. She was

bound to the north, and put in there by foul weather. She sold her corn at ten shillings the bushel.

June 14.] At a court, John Sagamore and Chickatabot being told at last court of some injuries that their men did to our cattle, and giving consent to make satisfaction, &c. now one of their men was complained of for shooting a pig, &c. for which Chickatabot was ordered to pay a small skin of beaver, which he presently paid.

At this court one Philip Ratcliff, a servant of Mr. Cradock, being convict, ore tenus, of most foul, scandalous invectives against our churches and government, was censured to be whipped, lose his ears, and be banished the plantation, which was presently executed.

25.] There came a shallop from Pascataqua, which brought news of a small English ship come thither with provisions and some Frenchmen to make salt. By this boat, Capt. Neal, governour of Pascataqua, sent a packet of letters to the governour, directed to Sir Christopher Gardiner, which when the governour had opened, he found it came from Sir Ferdinando Gorges, (who claims a great part of the Bay of Massachusetts.) In the packet was one letter to Thomas Morton, (sent prisoner before into England upon the lord chief justice's warrant :) by both which letters it appeared, that he had some secret design to recover his pretended right, and that he reposed much trust in Sir Christopher Gardiner.

These letters we opened, because they were directed to one, who was our prisoner, and had declared himself an ill willer to our government.

July 4.] The governour built a bark at Mistick, which was launched this day, and called the Blessing of the Bay. . . . .

September 6.] About this time last year the company here set forth a pinnace to the parts about Cape Cod, to trade for corn, and it brought here above eighty bushels. This year again the Salein pinnace, being bound thither for corn, was, by contrary winds, put into Plimouth, where the governour, &c. fell out with them, not only forbidding them to trade, but also telling them they would oppose them by force, even to the spending of their lives, &c.; whereupon they returned, and acquainting the governour of Massachusetts with it, he wrote to the governour of Plimouth this letter, here inserted, with their answer, which came about a month after.



The wolves did much hurt to calves and swine between Charles River and Mistick.

At the last court . . . one Henry Linne was whipped and banished, for writing letters into England full of slander against our government and orders of our churches.

17.] Mr. Shurd of Pemaquid, sent home James Sagamore's wife, who had been taken away at the surprise at Agawam, and writ that the Indians demanded [blank] fathom of wampam-peague and [blank] skins for her ransom.

27.] At a court, one Josias Plaistowe and two of his servants were censured for stealing corn from Chickatabot and his men, (who were present,) the master to restore two fold, and to be degraded from the title of a gentleman, and fined five pounds, and his men to be whipped.

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October 4.] The Blessing went on a voyage to the eastward.

11.] The governour, being at his farm house at Mistick, walked out after supper, and took a piece in his hand, supposing he might see a wolf, (for they came daily about the house, and killed swine and calves, &c. ;) and, being about half a mile off, it grew suddenly dark, so as, in coming home, he mistook his path, and went till he came to a little house of Sagamore John, which stood empty. There he stayed, and having a piece of match in his pocket, (for he always carried about him match and a compass, and in summer time snake-weed,) he made a good fire near the house, and lay down upon some old mats, which he found there, and so spent the night, sometimes walking by the fire, sometimes singing psalms, and sometimes getting wood, but could not sleep. It was (through God's mercy) a warm night ; but a little before day it began to rain, and, having no cloak, he made shift by a long pole to climb up into the house. In the morning, there came thither an Indian squaw, but perceiving her before she had opened the door, he barred her out ; yet she stayed there a great while essaying to get in, and at last she went away, and he returned safe home, his servants having been much perplexed for him, and having walked about, and shot off pieces, and hallooed in the night, but he heard them not. . . . .

[November] 11.] We kept a day of thanksgiving at Boston.

17.] The governour of Plimouth came to Boston, and lodged in the ship.

23.] Mr. Peirce went down to his ship, which lay at Nantascot. Divers went home with him into England by Virginia, as Sir Richard Saltonstall his eldest son and others; and they were six weeks in going to Virginia. . . . .

January 27 [1631/2.] The governour, and some company with him, went up by Charles River about eight miles above Watertown, and named the first brook, on the north side of the river, (being a fair stream, and coming from a pond a mile from the river,) Beaver Brook, because the beavers had shorn down divers great trees there, and made divers dams across the brook. Thence they went to a great rock, upon which stood a high stone, cleft in sunder, that four men might go through, which they called Adam's Chair, because the youngest of their company was Adam Winthrop. Thence they came to another brook, greater than the former, which they called Masters' Brook, because the eldest of their company was one John Masters. Thence they came to another high pointed rock, having a fair ascent on the west side, which they called Mount Feake, from one Robert Feake, who had married the governour's daughter-in-law. On the west side of Mount Feake, they went up a very high rock, from whence they might see all over Neipnett, and a very high hill due west, about forty miles off, and to the N. W. the high hills by Merrimack, above sixty miles off.

February 7.] The governour, Mr. Nowell, Mr. Eliot, and others, went over Mistick River at Medford, and going N. and by E. among the rocks about two or three miles, they came to a very great pond, having in the midst an island of about one acre, and very thick with trees of pine and beech; and the pond had divers small rocks, standing up here and there in it, which they therefore called Spot Pond. They went all about it upon the ice. From thence (towards the N. W. about half a mile,) they came to the top of a very high rock, beneath which, (towards the N.) lies a goodly plain, part open land, and part woody, from whence there is a fair prospect, but it being then close and rainy, they could see but a small distance. This place they called Cheese Rock, because, when they went to eat somewhat, they had only cheese, (the governour's man forgetting, for haste, to put up some bread.)

14.] The governour and some other company went to view the country as far as Neponsett, and returned that night.

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17.] The governour and assistants called before them, at Boston, divers of Watertown; the pastor and elder by letter, and the others by warrant. The occasion was, for that a warrant being sent to Watertown for levying of £8. part of a rate of £60, ordered for the fortifying of the new town, the pastor and elder, &c. assembled the people and delivered their opinions, that it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage. Being come before the governour and council, after much debate, they acknowledged their fault, confessing freely, that they were in an error, and made a retraction and submission under their hands, and were enjoined to read it in the assembly the next Lord's day. The ground of their error was, for that they took this government to be no other but as of a mayor and aldermen, who have not power to make laws or raise taxations without the people; but understanding that this government was rather in the nature of a parliament, and that no assistant could be chosen but by the freemen, who had power likewise to remove the assistants and put in others, and therefore at every general court (which was to be held once every year) they had free liberty to consider and propound any thing concerning the same, and to declare their grievances, without being subject to question, or, &c. they were fully satisfied; and so their submission was accepted, and their offence pardoned. . . . .

[March] 19.] Mr. Maverick, one of the ministers of Dorchester, in drying a little powder, (which took fire by the heat of the fire pan,) fired a small barrel of two or three pounds, yet did no other harm but singed his clothes. It was in the new meeting-house, which was thatched, and the thatch only blacked a little. . . . .

[1632.] At this court an act was made expressing the governour's power, &c. and the office of the secretary and treasurer, &c.

9.] The bark Warwick, and Mr. Maverick's pinnace, went out towards Virginia.

12.] The governour received letters from Plimouth, signifying, that there had been a broil between their men at Sowamset and the Naraganset Indians, who set upon the English house there to have taken Owsamequin, the sagamore of Packanocott,

who was fled thither with all his people for refuge; and that Capt. Standish, being gone thither to relieve the three English, which were in the house, had sent home in all haste for more men and other provisions, upon intelligence that Canonicus, with a great army, was coming against them. Withal they writ to our governour for some powder to be sent with all possible speed, (for it seemed they were unfurnished.) Upon this the governour presently despatched away the messenger with so much powder as he could carry, viz. twenty-seven pounds.

16.] The messenger returned, and brought a letter from the governour, signifying, that the Indians were retired from Sowams to fight with the Pequins, which was probable, because John Sagamore and Chickatabott were gone with all their men, viz. John Sagamore with thirty, and Chickatabott with [blank] to Canonicus, who had sent for them.

A wear was erected by Watertown men upon Charles River, three miles above the town, where they took great store of shads.

A Dutch ship brought from Virginia two thousand bushels of corn, which was sold at four shillings sixpence the bushel.

May 1.] The governour and assistants met at Boston to consider of the deputy his deserting his place. The points discussed were two. The 1st, upon what grounds he did it: 2d, whether it were good or void. For the 1st, his main reason was for publick peace; because he must needs discharge his conscience in speaking freely; and he saw that bred disturbance, &c. For the 2d, it was maintained by all, that he could not leave his place, except by the same power which put him in; yet he would not be put from his contrary opinion, nor would be persuaded to continue till the general court, which was to be the 9th of this month.

Another question fell out with him, about some bargains he had made with some poor men, members of the same congregation, to whom he had sold seven bushels and an half of corn to receive ten for it after harvest, which the governour and some others held to be oppressing usury, and within compass of the statute; but he persisted to maintain it to be lawful, and there arose hot words about it, he telling the governour, that, if he had thought he had sent for him to his house to give him such usage, he would not have come there; and that he never knew any man of understanding of other opinion; and that [if] the governour thought otherwise of it, it was his

weakness. The governour took notice of these speeches, and bare them with more patience than he had done, upon a like occasion, at another time. Upon this there arose another question, about his house. The governour having formerly told him, that he did not well to bestow such cost about wainscoting and adorning his house, in the beginning of a plantation, both in regard of the necessity of publick charges, and for example, &c. his answer now was, that it was for the warmth of his house, and the charge was little, being but clapboards nailed to the wall in the form of wainscot. These and other speeches passed before dinner. After dinner, the governour told them, that he had heard, that the people intended, at the next general court, to desire, that the assistants might be chosen anew every year, and that the governour might be chosen by the whole court, and not by the assistants only. Upon this, Mr. Ludlow grew into passion, and said, that then we should have no government, but there would be an interim, wherein every man might do what he pleased, &c. This was answered and cleared in the judgment of the rest of the assistants, but he continued stiff in his opinion, and protested he would then return back into England.

Another business fell out, which was this. Mr. Clark of Watertown had complained to the governour, that Capt. Patrick, being removed out of their town to Newtown, did compel them to watch near Newtown, and desired the governour, that they might have the ordering within their own town. The governour answered him, that the ordering of the watch did properly belong to the constable; but in those towns where the captains dwelt, they had thought fit to leave it to them, and since Capt. Patrick was removed, the constable might take care of it; but advised him withal to acquaint the deputy with it, and at the court it should be ordered. Clark went right home and told the captain, that the governour had ordered, that the constable should set the watch, (which was false); but the captain answered somewhat rashly, and like a soldier, which being certified to the governour by three witnesses, he sent a warrant to the constable to this effect, that whereas some difficulty was fallen out, &c. about the watch, &c. he should, according to his office, see due watch should be kept till the court had taken order in it. This much displeased the captain, who came to this meeting to have it redressed. The governour told the rest what he had done, and upon what

ground ; whereupon they refused to do any thing in it till the court.

While they were thus sitting together, an Indian brings a letter from Capt. Standish, then at Sowams, to this effect, that the Dutchmen (which lay for trading at Anygansett or Naragansett) had lately informed him, that many Pequins (who were professed enemies to the Anagansetts) had been there divers days, and advised us to be watchful, &c. giving other reasons, &c.

Thus the day was spent and no good done, which was the more uncomfortable to most of them, because they had commended this meeting to God in more earnest manner than ordinary at other meetings.

May 8.] A general court at Boston. Whereas it was (at our first coming) agreed, that the freemen should choose the assistants, and they the governour, the whole court agreed now, that the governour and assistants should all be new chosen every year by the general court, (the governour to be always chosen out of the assistants ; ) and accordingly the old governour, John Winthrop, was chosen ; accordingly all the rest as before, and Mr. Humfrey and Mr. Coddington also, because they were daily expected.

The deputy governour, Thomas Dudley, Esq. having submitted the validity of his resignation to the vote of the court, it was adjudged a nullity, and he accepted of his place again. and the governour and he being reconciled the day before. all things were carried very lovingly amongst all, &c. and the people carried themselves with much silence and modesty.

John Winthrop, the governour's son, was chosen an assistant.

A proposition was made by the people, that every company of trained men might choose their own captain and officers ; but the governour giving some reasons to the contrary, they were satisfied without it.

Every town chose two men to be at the next court, to advise with the governour and assistants about the raising of a publick stock, so as what they should agree upon should bind all, &c.

This court was begun and ended with speeches for the, &c. as formerly.

The governour, among other things, used this speech to the people, after he had taken his oath : That he had received gratuities from divers towns, which he received with much comfort and content ; he had also received many kindnesses

from particular persons, which he would not refuse, lest he should be accounted uncourteous, &c. ; but he professed, that he received them with a trembling heart, in regard of God's rule, and the consciousness of his own infirmity ; and therefore desired them, that hereafter they would not take it ill, if he did refuse presents from particular persons, except they were from the assistants, or from some special friends ; to which no answer was made ; but he was told after, that many good people were much grieved at it, for that he never had any allowance towards the charge of his place.

24.] The fortification upon the Corn Hill at Boston was begun.

25.] Charlestown men came and wrought upon the fortification.

Roxbury the next, and Dorchester the next.

26.] The Whale arrived with Mr. Wilson, Mr. Dummer, and about thirty passengers, all in health ; and of seventy cows lost but two. She came from Hampton April 8th. Mr. Graves was master. . . . .

[July 5.] At Watertown there was (in the view of divers witnesses) a great combat between a mouse and a snake ; and, after a long fight, the mouse prevailed and killed the snake. The pastor of Boston, Mr. Wilson, a very sincere, holy man, hearing of it, gave this interpretation : That the snake was the devil ; the mouse was a poor contemptible people, which God had brought hither, which should overcome Satan here, and dispossess him of his kingdom. Upon the same occasion, he told the governour, that, before he was resolved to come into this country, he dreamed he was here, and that he saw a church arise out of the earth, which grew up and became a marvellous goodly church.

After many imparlances and days of humiliation, by those of Boston and Roxbury, to seek the Lord for Mr. Welde his disposing, and the advice of those of Plimouth being taken, &c. at length he resolved to sit down with them of Roxbury.

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August 3.] The deputy, Mr. Thomas Dudley, being still discontented with the governour, partly for that the governour had removed the frame of his house, which he had set up at Newtown, and partly for that he took too much authority upon

him, (as he conceived), renewed his complaints to Mr. Wilson and Mr. Welde, who acquainting the governour therewith, a meeting was agreed upon at Charlestown, where were present the governour and deputy, Mr. Nowell, Mr. Wilson, Mr. Welde, Mr. Maverick, and Mr. Warham. The conference being begun with calling upon the Lord, the deputy began, — that howsoever he had some particular grievances &c.; yet, seeing he was advised by those present, and divers of the assistants, to be silent in them, he would let them pass, and so come first to complain of the breach of promise, both in the governour and others in not building at Newtown. The governour answered, that he had performed the words of his promise; for he had a house up and seven or eight servants abiding in it by the day appointed. . . . .

[November, 1633.] The scarcity of workmen had caused them to raise their wages to an excessive rate, so as a carpenter would have three shillings the day, a labourer two shillings and sixpence, &c.; and accordingly those who had commodities to sell advanced their prices sometime double to that they cost in England, so as it grew to a general complaint, which the court, taking knowledge of, as also of some further evils, which were springing out of the excessive rates of wages, they made an order, that carpenters, masons, &c. should take but two shillings the day, and labourers but eighteen pence, and that no commodity should be sold at above four pence in the shilling more than it cost for ready money in England; oil, wine, &c. and cheese, in regard of the hazard of bringing, &c. [excepted.] The evils which were springing, &c. were, 1. Many spent much time idly, &c. because they could get as much in four days as would keep them a week. 2. They spent much in tobacco and strong waters, &c. which was a great waste to the commonwealth, which, by reason of so many foreign commodities expended, could not have subsisted to this time, but that it was supplied by the cattle and corn, which were sold to newcomers at very dear rates, viz. corn at six shillings the bushel, a cow at £20, — yea, some at £24, some £26, — a mare at £35, an ewe goat at 3 or £4; and yet many cattle were every year brought out of England, and some from Virginia. Soon after order was taken for prices of commodities, viz. not to exceed the rate of four pence in the shilling above the price in England, except cheese and liquors, &c. . . . .



[May 14, 1634.] At this court it was ordered, that four general courts should be kept every year, and that the whole body of the freemen should be present only at the court of election of magistrates, &c. and that, at the other three, every town should send their deputies, who should assist in making laws, disposing lands, &c. Many good orders were made this court. It held three days, and all things were carried very peaceably, notwithstanding that some of the assistants were questioned by the freemen for some errors in their government, and some fines imposed, but remitted again before the court brake up. The court was kept in the meeting-house at Boston, and the new governour and the assistants *were together entertained* at the house of the old governour, as before. . . . .

November 5.] At the court of assistants complaint was made by some of the country, (viz. Richard Brown of Watertown, in the name of the rest,) that the ensign at Salem was defaced, viz. one part of the red cross taken out. Upon this, an attachment was awarded against Richard Davenport, ensign-bearer, to appear at the next court to answer. Much matter was made of this, as fearing it would be taken as an act of rebellion, or of like high nature, in defacing the king's colours; . . . . . What proceeding was hereupon, will appear after, at next court, in the first month; (for, by reason of the great snows and frosts, we used not to keep courts in the three winter months.) . . . . .

27.] The assistants met at the governour's, to advise about the defacing of the cross in the ensign at Salem, where (taking advice with some of the ministers) we agreed to write to Mr. Downing in England, of the truth of the matter, under all our hands, that, if occasion were, he might show it in our excuse; for therein we expressed our dislike of the thing, and our purpose to punish the offenders, yet with as much wariness as we might, being doubtful of the lawful use of a cross in an ensign, though we were clear that fact, as concerning the manner, was very unlawful.

It was then informed us, how Mr. Eliot, the teacher of the church of Roxbury, had taken occasion, in a sermon, to speak of the peace made with the Pekods, and to lay some blame upon the ministry for proceeding therein, without consent of the people, and for other feelings (as he conceived). We took order, that he should be dealt with by Mr. Cotton, Mr. Hooker,

and Mr. Welde, to be brought to see his error, and to heal it by some publick explanation of his meaning; for the people began to take occasion to murmur against us for it.

It was likewise informed, that Mr. Williams of Salem had broken his promise to us, in teaching publicly against the king's patent, and our great sin in claiming right thereby to this country, &c. and for usual terming the churches of England antichristian. We granted summons to him for his appearance at the next court.

The aforesaid three ministers, upon conference with the said Mr. Eliot, brought him to acknowledge his error in that he had mistaken the ground of his doctrine, and that he did acknowledge, that, for a peace only, (whereby the people were not to be engaged in a war,) the magistrates might conclude, plebe inconsulto, and so promised to express himself in publick next Lord's day. . . . .

[Mo. 1. 4. 1634/5.] Mr. Endecott was called to answer for defacing the cross in the ensign; but, because the court could not agree about the thing, whether the ensigns should be laid by, in regard that many refused to follow them, the whole cause was deferred till the next general court; and the commissioners for military affairs gave order, in the mean time, that all the ensigns should be laid aside, &c.

At this court brass farthings were forbidden, and musket bullets made to pass for farthings. . . . .

[Mo. 3. 6. 1635.] Mr. Endecott was . . . . called into question about the defacing the cross in the ensign; and a committee was chosen, viz. every town chose one, (which yet were voted by all the people,) and the magistrates chose four, who, taking the charge to consider of the offence, and the censure due to it, and to certify the court, after one or two hours time, made report to the court, that they found his offence to be great, viz. rash and without discretion, taking upon him more authority than he had, and not seeking advice of the court, &c.; uncharitable, in that he, judging the cross, &c. to be a sin, did content himself to have reformed it at Salem, not taking care that others might be brought out of it also; laying a blemish also upon the rest of the magistrates, as if they would suffer idolatry, &c. and giving occasion to the state of England to think ill of us;—for which they adjudged him worthy admonition, and to be disabled for one year from bearing any publick office; declining any heavier sentence, because they

were persuaded he did it out of tenderness of conscience, and not of any evil intent. . . . .

The matter of altering the cross in the ensign was referred to the next meeting, (the court being adjourned for three weeks), it being propounded to turn it to the red and white rose, &c. and every man was to deal with his neighbours, to still their minds, who stood so stiff for the cross, until we should fully agree about it, which was expected, because the ministers had promised to take pains about it, and to write into England to have the judgments of the most wise and godly there. . . . .

Mo. 5. 8.] At the general court, Mr. Williams of Salem was summoned, and did appear. It was laid to his charge, that, being under question before the magistracy and churches for divers dangerous opinions, viz. 1, that the magistrate ought not to punish the breach of the first table, otherwise than in such cases as did disturb the civil peace; 2, that he ought not to tender an oath to an unregenerate man; 3, that a man ought not to pray with such, though wife, child, &c.; 4, that a man ought not to give thanks after the sacrament nor after meat, &c.; and that the other churches were about to write to the church of Salem to admonish him of these errors; notwithstanding the church had since called him to [the] office of a teacher. Much debate was about these things. The said opinions were adjudged by all, magistrates and ministers, (who were desired to be present,) to be erroneous, and very dangerous, and the calling of him to office, at that time, was judged a great contempt of authority. So, in fine, time was given to him and the church of Salem to consider of these things till the next general court, and then either to give satisfaction to the court, or else to expect the sentence; it being professedly declared by the ministers, (at the request of the court to give their advice,) that he who should obstinately maintain such opinions, (whereby a church might run into heresy, apostacy, or tyranny, and yet the civil magistrate could not intermeddle,) were to be removed, and that the other churches ought to request the magistrates so to do. . . . .

Salem men had preferred a petition, at the last general court, for some land in Marblehead Neck, which they did challenge as belonging to their town; but, because they had chosen Mr. Williams their teacher, while he stood under question of authority, and so offered contempt to the magistrates, &c. their peti-

tion was refused till, &c. Upon this the church of Salem write to other churches, to admonish the magistrates of this as a heinous sin, and likewise the deputies; for which, at the next general court, their deputies were not received until they should give satisfaction about the letter. . . . .

[Mo. 6. Aug. 16.] Mr. Williams, pastor of Salem, being sick and not able to speak, wrote to his church a protestation, that he could not communicate with the churches in the bay; neither would he communicate with them, except they would refuse communion with the rest; but the whole church was grieved herewith. . . . .

October.] At this general court Mr. Williams, the teacher of Salem, was again convened, and all the ministers in the bay being desired to be present, he was charged with the said two letters,—that to the churches, complaining of the magistrates for injustice, extreme oppression, &c. and the other to his own church, to persuade them to renounce communion with all the churches in the bay, as full of antichristian pollution, &c. He justified both these letters, and maintained all his opinions; and, being offered further conference or disputation, and a month's respite, he chose to dispute presently. So Mr. Hooker was appointed to dispute with him, but could not reduce him from any of his errors. So, the next morning, the court sentenced him to depart out of our jurisdiction within six weeks, all the ministers, save one, approving the sentence; and his own church had him under question also for the same cause; and he, at his return home, refused communion with his own church, who openly disclaimed his errors, and wrote an humble submission to the magistrates, acknowledging their fault in joining with Mr. Williams in that letter to the churches against them, &c. . . . .

11 mo. January [1635/6.] The governour and assistants met at Boston to consider about Mr. Williams, for that they were credibly informed, that, notwithstanding the injunction laid upon him (upon the liberty granted him to stay till the spring) not to go about to draw others to his opinions, he did use to entertain company in his house, and to preach to them, even of such points as he had been censured for; and it was agreed to send him into England by a ship then ready to depart. The reason was, because he had drawn above twenty persons to his opinion, and they were intended to erect a

plantation about the Naragansett Bay, from whence the infection would easily spread into these churches, (the people being, many of them, much taken with the apprehension of his godliness.) Whereupon a warrant was sent to him to come presently to Boston, to be shipped, &c. He returned answer, (and divers of Salem came with it,) that he could not come without hazard of his life, &c. Whereupon a pinnace was sent with commission to Capt. Underhill, &c. to apprehend him, and carry him aboard the ship, (which then rode at Natascutt;) but, when they came at his house, they found he had been gone three days before; but whither they could not learn.

He had so far prevailed at Salem, as many there (especially of devout women) did embrace his opinions, and separated from the churches, for this cause, that some of their members, going into England, did hear the ministers there, and when they came home the churches here held communion with them. . . . .

[Mo. 2.] 7. [1636.] At a general court it was ordered, that a certain number of the magistrates should be chosen for life; (the reason was, for that it was showed from the word of God, &c. that the principal magistrates ought to be for life.) Accordingly, the 25th of the 3d mo. John Winthrop and Thomas Dudley were chosen to this place, and Henry Vane, by his place of governour, was president of this council for his year. It was likewise ordered, that quarter courts should be kept in several places for ease of the people, and, in regard of the scarcity of victuals, the remote towns should send their votes by proxy to the court of elections; and that no church, &c. should be allowed, &c. that was gathered without consent of the churches and the magistrates. . . . .

[Mo. 3. 31.] One Miller, master's mate in the Hector, spake to some of our people aboard his ship, that, because we had not the king's colours at our fort, we were all traitors and rebels, &c. The governour sent for the master, Mr. Ferne, and acquainted him with it, who promised to deliver him to us. Whereupon we sent the marshal and four serjeants to the ship for him, but the master not being aboard, they would not deliver him; whereupon the master went himself and brought him to the court, and, the words being proved against him by two witnesses, he was committed. The next day the master, to pacify his men, who were in a great tumult, requested he

might be delivered to him, and did undertake to bring him before us again the day after, which was granted him, and he brought him to us at the time appointed. Then, in the presence of all the rest of the masters, he acknowledged his offence, and set his hand to a submission, and was discharged. Then the governour desired the masters, that they would deal freely, and tell us, if they did take any offence, and what they required of us. They answered, that, in regard they should be examined upon their return, what colours they saw here, they did desire that the king's colours might be spread at our fort. It was answered, that we had not the king's colours. Thereupon two of them did offer them freely to us. We replied, that for our part we were fully persuaded, that the cross in the ensign was idolatrous, and therefore might not set it in our ensign; but, because the fort was the king's, and maintained in his name, we thought that his own colours might be spread there. So the governour accepted the colours of Capt. Palmer, and promised they should be set up at Castle Island. We had conferred over night with Mr. Cotton, &c. about the point. The governour, and Mr. Dudley, and Mr. Cotton, were of opinion, that they might be set up at the fort upon this distinction, that it was maintained in the king's name. Others, not being so persuaded, answered, that the governour and Mr. Dudley, being two of the council, and being persuaded of the lawfulness, &c. might use their power to set them up. Some others, being not so persuaded, could not join in the act, yet would not oppose, as being doubtful, &c.

John Winthrop, *The History of New England from 1630 to 1649* (edited by James Savage, Boston, 1825), I. *passim*.

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# American History Leaflets.

COLONIAL AND CONSTITUTIONAL.

No. 32. — APRIL, 1901.

DOCUMENTS RELATING  
TO  
TERRITORIAL ADMINISTRATION.

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1778-1790.

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The attitude of the Congress of the Confederation toward the territories of the United States is important, not only because it includes the foundations of our public-land policy, but also because in the propositions and ordinances of the time we have the germs of a system of colonial government. The texts of these important documents have in part remained unpublished, and in part are known only in careless transcriptions. This number of the *American History Leaflets* contains the most important documents relative

to territorial government, and to the limitations on new states, between 1778 and 1789. All the federal documents have been verified from the originals in the State Department at Washington.

In Number 22 of the *Leaflets* have been printed the principal documents relating to the controversy between the federal government and the states for the Northwest Territory. Two documents closely related to that question are here inserted, — the Virginia Instructions to George Rogers Clark, and the Virginia Statute for creating the County of Illinois: they show the expectation of Virginia as to a future government of the Northwest country. The cessions by New York and Virginia in 1781 and 1783 made it certain that there would be a broad area for which Congress must provide a government; hence various propositions for territorial government, of which three, — the Ordinance of 1784, the Grayson Land Ordinance of 1785, and the Northwest Ordinance, — were actually passed by Congress, and contain the germs of the later territorial and colonial system.

Upon the territorial question during the Confederation there is abundant material, of which a select bibliography will be found in Channing and Hart, *Guide to the Study of American History*, § 150; a more detailed bibliography, in Justin Winsor, *Narrative and Critical History of America*, VII, 528-539. The best secondary discussions of the subject are George Bancroft, *History of the Constitution*, several chapters on territory; Shosuke Sato, *History of the Land Question*, 22-120; Theodore Roosevelt, *The Winning of the West*, III, chs. i-vi; John Fiske, *Critical Period*, ch. v; B. A. Hinsdale, *The Old Northwest*, chs. xiv-xvi.

On the Ordinance of 1787 there is a special literature: the Cutlers' *Life of Manasseh Cutler*; Edward Coles, *History of the Ordinance*; G. T. Curtis, *Constitutional History*, I, chs. v, xiv; the general histories, — McMaster, Schouler, and Pitkin.

The propositions which were adopted by Congress can be found in print in Bioren and Duane, *Land Laws of the United States*; in Thomas Donaldson, *Public Domain* (inaccurate transcripts); and in the *Journals of Congress*. The reports of committees have not before been printed in carefully verified form and in connection with each other. For historical maps, see introduction to *Leaflet*, No. 22.

## I — 1778, Jan. 2. Virginia's Private Instructions to George Rogers Clark.

### VIRGINIA SCT

*In Council, Wmsbug, Jan. 2, 1778.*

LIEUT. COLONEL GEORGE ROGERS CLARK:

You are to proceed with all convenient Speed to raise Seven Companies of Soldiers to consist of fifty men each officered in the usual manner & armed most properly for the Enterprise, & with this Force attack the British post at Kaskasky.

It is conjectured that there are many pieces of Cannon & military Stores to considerable amount at that place, the taking & preservation of which would be a valuable acquisition to the State. If you are so fortunate therefore as to succeed in your Expectation, you will take every possible Measure to secure the artillery & stores & whatever may advantage the State.

For the Transportation of the Troops, provisions, &c., down the Ohio, you are to apply to the Commanding Officer at Fort Pitt for Boats, &c. during the whole Transaction you are to take especial Care to keep the true Destination of your Force secret. Its success depends upon this. Orders are therefore given to Capt<sup>n</sup> Smith to secure the two men from Kaskasky. Similar conduct will be proper in similar cases.

It is earnestly desired that you show Humanity to such British Subjects and other persons as fall in your hands. If the white Inhabitants at the post & the neighbourhood will give undoubted Evidence of their attachment to this State (for it is certain they live within its Limits) by taking the Test prescribed by Law and by every other way & means in their power, Let them be treated as fellow Citizens & their persons & property duly secured. Assistance & protection against all Enemies whatever shall be afforded them, & the commonwealth of Virginia is pledged to accomplish it. But if these people will not accede to these reasonable Demands, they must feel the Miseries of War, under the direction of that Humanity that has hitherto distinguished Americans, & which it is expected you will ever consider as the Rule of your Conduct, & from which you are in no Instance to depart.

The Corps you are to command are to receive the pay & allowance of Militia & to act under the Laws & Regulations of this State now in Force as Militia. The Inhabitants at this Post will be informed by you that in Case they accede to the offers of becoming Citizens of this Commonwealth a proper Garrison will be maintained among them & every Attention bestowed to render their Commerce beneficial, the fairest prospects being opened to the Dominions of both France & Spain.

It is in Contemplation to establish a post near the Mouth of Ohio. Cannon will be wanted to fortify it. Part of those at Kaskasky will be easily brought thither or otherwise secured as circumstances will make necessary.

You are to apply to General Hand for powder & Lead neces-

sary for this Expedition. If he can't supply it the person who has that which Cap<sup>t</sup> Lynn bro<sup>t</sup> from Orleans can. Lead was sent to Hampshire by my orders & that may be delivered you. Wishing you success, I am Sir,

Your h<sup>b</sup>le Serv.,  
P. HENRY.

George Rogers Clark, *Sketch of his Campaign in the Illinois in 1778-9*, pp. 95-97.

## 2 — 1778, Oct. Virginia's Act for Illinois County.

WHEREAS by a successful expedition carried on by the Virginia militia, on the western side of the Ohio river, several of the British posts within the territory of this commonwealth, in the country adjacent to the river Mississippi, have been reduced, and the inhabitants have acknowledged themselves citizens thereof, and taken the oath of fidelity to the same, and the good faith and safety of the commonwealth require that the said citizens should be supported and protected by speedy and effectual reinforcements, which will be the best means of preventing the inroads and depredations of the Indians upon the inhabitants to the westward of the Allegheny mountains; and whereas, from their remote situation, it may at this time be difficult, if not impracticable, to govern them by the present laws of this commonwealth, until proper information, by intercourse with their fellow citizens, on the east side of the Ohio, shall have familiarised them to the same, and it is therefore expedient that some temporary form of government, adapted to their circumstances, should in the mean time be established:

*Be it enacted by the General Assembly*, That all the citizens of this commonwealth who are already settled, or shall hereafter settle, on the western side of the Ohio aforesaid, shall be included in a distinct county, which shall be called Illinois county; and that the governour of this commonwealth, with the advice of the council, may appoint a county lieutenant or commandant in chief in that county, during pleasure, who shall appoint and commission so many deputy commandants, militia officers, and commissaries, as he shall think proper in

the different districts, during pleasure, all of whom, before they enter into office, shall take the oath of fidelity to this commonwealth and the oath of office, according to the form of their own religion, which the inhabitants shall fully, and to all intents and purposes enjoy, together with all their civil rights and property. And all civil officers to which the said inhabitants have been accustomed, necessary for the preservation of peace and the administration of justice, shall be chosen by a majority of the citizens in their respective districts, to be convened for that purpose by the county lieutenant or commandant, or his deputy, and shall be commissioned by the said county lieutenant or commandant in chief, and be paid for their services in the same manner as such expenses have been heretofore borne, levied, and paid in that county; which said civil officers, after taking the oath as before prescribed, shall exercise their several jurisdictions, and conduct themselves agreeable to the laws which the present settlers are now accustomed to. And on any criminal prosecution, where the offender shall be adjudged guilty, it shall and may be lawful for the county lieutenant or commandant in chief to pardon his or her offence, except in cases of murder and treason; and in such cases, he may respite execution from time to time, until the sense of the governour in the first instance, and of the general assembly in the case of treason, is obtained. But where any officers, directed to be appointed by this act, are such as the inhabitants have been unused to, it shall and may be lawful for the governour, with the advice of the council, to draw a warrant or warrants on the treasury of this commonwealth for the payment of the salaries of such officers, so as the sum or sums drawn for do not exceed the sum of five hundred pounds, any thing herein to the contrary notwithstanding.

And for the protection and defence of the said county and its inhabitants, *Be it enacted*, That it shall and may be lawful for the governour, with the advice of the council, forthwith to order, raise, and levy, either by voluntary enlistments, or detachments from the militia, five hundred men, with proper officers, to march immediately into the said county of Illinois, to garrison such forts or stations already taken, or which it may be proper to take there or elsewhere, for protecting the said county, and for keeping up our communication with them, and also with the Spanish settlements, as he, with the advice aforesaid, shall direct. And the said governour, with the



advice of the council, shall from time to time, until farther provision shall be made for the same by the general assembly, continue to relieve the said volunteers, or militia, by other enlistments or detachments, as herein before directed, and to issue warrants on the treasurer of this commonwealth for all charges and expenses accruing thereon, which the said treasurer is hereby required to pay accordingly.

*And be it farther enacted,* That it shall and may be lawful for the governour, with the advice of the council, to take such measures as they shall judge most expedient or the necessity of the case requires, for supplying the said inhabitants as well as our friendly Indians in those parts, with goods and other necessities, either by opening a communication and trade with New Orleans, or otherwise, and to appoint proper persons for managing and conducting the same on behalf of this commonwealth.

*Provided,* That any of the said inhabitants may likewise carry on such trade, on their own accounts, notwithstanding.

This act shall continue and be in force, from and after the passing of the same, for and during the term of twelve months, and from thence to the end of the next session of assembly, and no longer.

William Waller Hening, *The Statutes at Large, being a Collection of all the Laws of Virginia*, IX, 552-555.

### 3—1780, Oct. 10. Resolutions of Congress on Territories.

*Resolved* That the unappropriated lands that may be ceded or relinquished to the united states by any particular states pursuant to the recommendation of Congress of the 6 day of September last shall be disposed of for the common benefit of the united states and be settled and formed into distinct republican states which shall become members of the foederal Union and have the same rights of sovereignty freedom and independence as the other states. That each state which shall be so formed, shall contain a suitable extent of territory not less than one hundred nor more than one hundred and fifty miles square or as near thereto as circumstances will admit. That the necessary and reasonable expenses, which any par-

particular state shall have incurred since the commencement of the present war in subduing any of the british posts or in maintaining forts or garrisons within and for the defence, or in acquiring any part, of the territory that may be ceded or relinquished to the united states shall be reimbursed

That the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United states in Congress assembled or any nine or more of them.

*Manuscript Journals of Congress.*

#### 4—1783, June 5. Bland's Draft Ordinance.

Motion of M<sup>r</sup> Bland  
seconded by M<sup>r</sup> Hamilton  
June 5, 1783  
Referred to the Grand Com<sup>ee</sup>  
of 30 May 1783.  
M<sup>r</sup> Holten.

Whereas it has pleased the Almighty disposer of Human affairs, to put a period to a long and Bloody War which has terminated in the Establishment of Independance to these united states—and whereas it is the duty as well as the wish of Congress to remove as speedily as possible every cause which might disturb the tranquility and harmony of these states, so happily united in one great Political interest—as well as to reward the brave and virtuous who have by their valor and perseverance established that independance and strengthened that Union—and to provide for the future government and prosperity of these states —

Resolved therefore that Congress will and do hereby accept the Cession of Territory made to the U. S. by the Act of the Assembly of Virginia bearing date the — day of — 178 , on the terms therein Stipulated — except so far as relates to a specific guarantee of the remaining Territory reserved by the said State—Resolved, that, if the aforesaid acceptance shall be agreeable, to the Said State and they shall be willing to withdraw the said stipulation, and if the consent and approbation of the Army of the United states shall be Signified to

the following act of the United States in Congress assembled — then and in that case the following ordinance shall begin to take effect and be in full force for all and every the purposes therein Mentioned viz

It is hereby ordained by the United States in Congress assembled — that in Lieu of the Commutation for the half Pay of the Army, and in Lieu of the arrearages due to the Officers and Soldiers of the Armies of the United states — and of all other debts due to the sd officers and Soldiers who now Constitute the said army or who have served therein for a term not less than three years during the War and for the representatives of such officers & soldiers who shall have died in the service — that there shall be assignd and set apart, a tract of Unlocated or Vacant Territory laying within the boundaries of the United States as ceded by the Preliminary Articles between great Britain & America, and bounded as follows — viz (here insert the boundaries) — that the said Territory shall be laid off in districts not exceeding two degrees of Latitude & three degrees of Longitude each — and each district in Townships not exceeding — miles square That the lines of the Said districts shall be run at the Expense of the United States by surveyors appointed by the U. S. in Congress assembled and amenable to Congress for their Conduct. That each of the Said districts shall when it contains 20,000 Male Inhabitants, become and ever after be and constitute a separte independant free & sovereign state and be admitted into the Union as such with all the Privilidges and immunities of those states which now compose the Union — That each officer & soldier now in the Army of the U. S. shall be entitled, to and shall have a grant for thirty acres of the Said Land for every dollar which shall appear to be due to such officer or Soldier from the United States — for his Services in the Army over and above the Bounty promised by an act of Congress of the — day — of — 1776 — and moreover that every officer and Soldier who shall make it appear that he has served three years in the army of the United states — shall be entitled to receive a grant of the S<sup>d</sup> lands equal to the bounties promised to officers and soldiers serving during the War in Lieu of all debts due for their said services, half pay, &c. or where the said debts have been liquidated — they shall be entitled to receive a grant of thirty acres for every dollar ascertained to be due to them in like manner as the officers and soldiers —

whose commutation, and arrearages have been liquidated — and be it further ordained — that out of every Hundred thousand acres so granted — there shall be reserved as a domain for the Use of the United States, ten thousand acres — each of which ten thousand acres, shall remain for ever a common property of the United states unalienable but by the consent of — of the U. S. in Congress assembled — the rents Mesne (?) profits and produce of which Lands when any such shall arise to be appropriated to the Payment of the Civil List of the United states the erecting frontier forts — the founding Seminaries of Learning and the Surplus after such purposes (if any) to be appropriated to the Building and equipping a Navy — and to no other use or purpose whatever — and be it further ordaind that the Said Lands so granted to the officers and soldiers, shall be free of all taxes and Quitrents for the space of seven years from the passing this Ordinance

*Papers of old Congress* (Ms. in State Department).

## 5—1784, April 23. Jefferson's Draft Ordinance.

The Committee appointed to prepare a plan for the temporary government of the Western Territory have agreed to the following resolutions —

Resolved, That the territory ceded or to be ceded by Individual states to the United states, whensoever the same shall have been purchased of the Indian Inhabitants & offered for sale by the U.S., shall be formed into distinct states bounded in the following manner as nearly as such cessions will admit, that is to say; Northwardly & Southwardly by parallels of latitude so that each state shall comprehend from South to North two degrees of latitude beginning to count from the completion of thirty one degrees North of the Equator. but any territory Northwardly of the 47<sup>th</sup> degree shall make part of the state next below. and Eastwardly & Westwardly they shall be bounded, those on the Missisipi by that river on one side and the meridian of the lowest point of the rapids of Ohio on the other; and those adjoining on the East by the same meridian on their Western side, and on their Eastern by the meridian of the Western cape of the mouth of the Great

Kanaway. And the territory Eastward of this last meridian between the Ohio, Lake Erie, & Pennsylvania shall be one state.

That the settlers within the Territory so to be purchased & offered for Sale shall, either on their own petition, or on the order of Congress, receive authority from them, with appointments of time and place for their free males of full age to meet together for the purpose of establishing a temporary government to adopt the constitution & laws of any one of these states, so that such laws nevertheless shall be subject to alteration by their ordinary legislature, and to erect, subject to a like alteration, counties or townships for the election of members for their legislature.

That such temporary government shall only continue in force in any state until it shall have acquired 20,000 free inhabitants; when giving due proof thereof to Congress, they shall receive from them authority with appointments of time and place to call a Convention of representatives to establish a permanent constitution & government for themselves.

Provided That both the temporary & permanent governments be established on these principles as their basis:

1. [that they shall forever remain a part of the United states of America.]
2. that in their persons, property and territory they shall be subject to the government of the United states in Congress assembled, and to the Articles of confederation in all those cases in which the original states shall be so subject.
3. that they shall be subject to pay a part of the federal debts contracted or to be contracted to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on other states.
4. That their respective governments shall be in republican forms, [and shall admit no person to be a citizen who holds any hereditary title.]
5. That after the year 1800 of the Christian æra, there shall be neither slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty].

That whensoever any of the sd states shall have, of free inhabitants, as many as shall then be in any one the least numerous of the thirteen original states, such state shall be admitted by it's delegates into the Congress of the United states, on an equal footing with the said original states: after

which the assent of two thirds of the United states in Congress assembled shall be requisite in all those cases, wherein by the Confederation, the assent of nine states is now required. provided the consent of nine states to such admission may be obtained according to the eleventh of the articles of Confederation. Until such admission by their delegates into Congress, any of the said states, after the establishment of their temporary government, shall have authority to keep a sitting member in Congress, with a right of debating, but not of voting.

That the territory Northward of the 45<sup>th</sup> degree, that is to say, of the completion of 45° from the Equator, & extending to the Lake of the Woods, shall be called *Sylvania*: that of the territory under the 45<sup>th</sup> & 44<sup>th</sup> degrees that which lies Westward of Lake Michigan shall be called *Michigania*, and that which is Eastward thereof within the peninsul, formed by the lakes & waters of Michigan, Huron, St Clair and Erie, shall be called *Cherronesus*, and shall include any part of the peninsul which may extend above the 45<sup>th</sup> degree. of the territory under the 43<sup>d</sup> & 42<sup>d</sup> degrees, that to the Westward thro' which the Assenisipi or Rock river runs shall be called *Assenisipia* and that to the Eastward in which are the fountains of the Muskingum, the two Miamis of Ohio, the Wabash, the Illinois, the Miami of the lake and Sandusky rivers, shall be called *Metropotamia*. of the territory which lies under the 41<sup>st</sup> & 40<sup>th</sup> degrees, the Western, thro which the river Illinois runs, shall be called *Illinoia*: that next adjoining to the Eastward *Saratoga*. and that between this last & Pennsylvania and extending from the Ohio to Lake Erie shall be called *Washington*. of the territory which lies under the 39<sup>th</sup> & 38<sup>th</sup> degrees to which shall be added so much of the point of land within the fork of the Ohio & Missisipi as lies under the 37<sup>th</sup> degree, that to the Westward within & adjacent to which, are the confluences of the rivers Wabash, Shawanee, Tanissee, Ohio, Illinois, Missisipi & Missouri, shall be called *Polypotamia*, and that to the Eastward, farther up the Ohio, otherwise called the Pelisipi shall be called *Pelisipia*.

That the preceding articles shall be formed into a Charter of Compact shall be duly executed by the President of the U.S. in Congress assembled under his hand & the seal of the United States, shall be promulgated, and shall stand as fundamental Constitutions between the thirteen original states, &

those now newly described, unalterable but by the joint consent of the U.S. in Congress assembled and of the particular state within which such alteration is proposed to be made.

*Papers of old Congress* (Ms. in State Department).

## 6 — 1784, April 23. First Territorial Ordinance.

The amendment of Mr Gerry being adopted the report as amended was agreed to as follows

Resolved that so much of the territory ceded or to be ceded by individual states to the United States as is already purchased or shall be purchased of the Indian inhabitants and offered for sale by Congress shall be divided into distinct states in the following manner as nearly as such cessions will admit, that is to say, by parallels of latitude, so that each state shall comprehend from North to South two degrees of latitude beginning to count from the completion of forty five degrees north of the equator; and by meridians of longitude one of which shall pass through the lowest point of the rapids of Ohio and the other through the western cape of the Mouth of the Great Kanhaway. But the territory eastward of this last meridian between the Ohio, lake Erie and Pennsylvania shall be one state, whatsoever may be its comprehension of latitude. That which may lie beyond the completion of the 45<sup>th</sup> degree between the said meridians shall make part of the state adjoining it on the South and that part of the Ohio, which is between the same meridians coinciding nearly with the parallel of 39° shall be substituted so far in lieu of that parallel as a boundary line.

That the settlers [on] any territory so purchased and offered for sale shall either on their own petition or on the order of Congress receive authority from them with appointments of time & place for their free males of full age within the limits of their state to meet together, for the purpose of establishing a temporary government, to adopt the constitution and laws of any one of the original States; so that such laws nevertheless shall be subject to alteration by their ordinary legislature; and to erect, subject to a like alteration, counties, townships or other divisions for the election of members for their legislature.

That, when any such state shall have acquired twenty thousand free inhabitants, on giving due proof thereof to Congress, they shall receive from them authority with appointments of time and place to call a convention of representatives to establish a permanent constitution and government for themselves. Provided that both the temporary & permanent governments be established on these principles as their basis

First That they shall for ever remain a part of this confederacy of the United states of America

Second That they shall be subject to the articles of Confederation in all those cases in which the Original states shall be so subject, and to all the acts and Ordinances of the United states in Congress assembled conformable thereto.

Third That they in no case shall interfere with the primary disposal of the soil by the United States in Congress assembled nor with the ordinances and regulations which Congress may find necessary for securing the title in such soil to the bonâ fide purchasers.

Fourth That they shall be subject to pay a part of the federal debts contracted or to be contracted, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other states. —

Fifth That no tax shall be imposed on lands the property of the United states.

Sixth That their respective governments shall be republican

Seventh, That the lands of non resident proprietors shall in no case be taxed higher than those of residents within any new state before the admission thereof to a vote by its delegates in Congress.

That Whensoever any of the said states shall have of free inhabitants as many as shall then be in any one the least numerous of the thirteen Original states, such state shall be admitted by its delegates into the Congress of the United states on an equal footing with the said Original States provided the consent of so many states in Congress is first obtained as may at the time be competent to such admission. And in order to adapt the said articles of Confederation to the state of Congress when its numbers shall be thus encreased, it shall be proposed to the legislatures of the states originally parties thereto to require the assent of two thirds of the United States in Congress assembled in all those cases wherein by the said



articles, the assent of nine states is now required, which being agreed to by them shall be binding on the new States. Until such admission by their delegates into Congress, any of the said states after the establishment of their temporary government shall have authority to keep a member in Congress with a right of debating but not of voting.

That measures not inconsistent with the principles of the Confederation and necessary for the preservation of peace and good order among the settlers in any of the said new states until they shall assume a temporary government as aforesaid may from time to time be taken by the United states in Congress assembled.

That the preceding articles shall be formed into a charter of compact, shall be duly executed by the president of the United States in Congress assembled under his hand and the seal of the United States, shall be promulgated and shall Stand as fundamental constitutions between the thirteen original states and each of the several states now newly described, unalterable from and after the sale of any part of the territory of such state pursuant to this resolve, but by the joint consent of the United States in Congress assembled and of the particular state within which such alteration is proposed to be made.

[11 states vote ay; no state votes no.] *Manuscript Journals of Congress.*

## 7 — 1785, March 16. King's Draft Anti-Slavery Resolution.

WEDNESDAY, *March 16, 1785.*

Congress assembled: Present as yesterday.

A motion was made by M<sup>r</sup> King seconded by M<sup>r</sup> Ellery, That the following proposition be committed

That there shall be neither Slavery nor involuntary servitude in any of the states described in the resolve of Congress of the 23 April 1784 otherwise than in punishment of crimes whereof the party shall have been personally guilty; and that this regulation shall be an article of compact and remain a fundamental principle of the constitutions between the 13 Original States, and each of the states described in the said resolve of the 23 April 1784

*Manuscript Journals of Congress.*

## 8 — 1785, May 20. Grayson's Land Ordinance.

An Ordinance for ascertaining the mode of disposing of Lands in the Western Territory.

Be it Ordained by the United States in Congress assembled That the territory ceded by individual states to the United States which has been purchased of the Indian inhabitants shall be disposed of in the following manner

A Surveyor from each State shall be appointed by Congress or a committee of the States, who shall take an oath for the faithful discharge of his duty before the Geographer of the United States, who is hereby empowered and directed to administer the same; and the like oath shall be administered to each chain carrier by the surveyor under whom he acts.

The Geographer, under whose direction the surveyors shall act, shall occasionally form such regulations for their conduct, as he shall deem necessary; and shall have authority to suspend them for misconduct in Office and shall make report of the same to Congress or to the Committee of the States, and he shall make report in case of sickness, death or resignation of any surveyor.

The Surveyors as they are respectively qualified shall proceed to divide the said territory into townships of six miles square, by lines running due north and south and others crossing these at right angles as near as may be, unless where the boundaries of the late Indian purchases may render the same impracticable, and then they shall depart from this rule no farther than such particular circumstances may require; and each surveyor shall be allowed and paid at the rate of two dollars for every mile in length he shall run, including the wages of chain carriers, markers and every other expense attending the same.

The first line running north and south as aforesaid shall begin on the river Ohio at a point that shall be found to be due north from the western termination of a line which has been run as the southern boundary of the state of Pennsylvania and the first line running east and west shall begin at the same point and shall extend throughout the whole territory Provided that nothing herein shall be construed as fixing the western boundary of the state of Pennsylvania. The geographer shall

designate the townships or fractional parts of townships by numbers progressively from South to North, always beginning each range with number one; and the ranges shall be distinguished by their progressive numbers to the westward. The first range extending from the Ohio to the lake Erie being marked number one. The Geographer shall personally attend to the running of the first east and west line and shall take the latitude of the extremes of the first north and south line and of the mouths of the principal rivers.

The lines shall be measured with a chain; shall be plainly marked by chaps on the trees and exactly described on a plat, whereon shall be noted by the surveyor, at their proper distances, all mines, salt springs, salt licks and mill seats, that shall come to his knowledge, and all water courses mountains and other remarkable and permanent things over or near which such lines shall pass and also the quality of the lands.

The plats of the townships respectively shall be marked by subdivisions into lots of one mile square or 640 acres, in the same direction as the external lines and numbered from 1 to 36, always beginning the succeeding range of the lots with the number next to that with which the preceding one concluded. And where, from the causes before mentioned, only a fractional part of a township shall be surveyed, the lots protracted thereon shall bear the same numbers as if the township had been entire. And the surveyors in running the external lines of the townships shall at the interval of every mile mark corners for the lots which are adjacent, always designating the same in a different manner from those of the townships.

The geographer and surveyors shall pay the utmost attention to the variation of the magnetic needle, and shall run and note all lines by the true meridian, certifying with every plat what was the variation at the times of running the lines thereon noted.

As soon as seven ranges of townships & fractional parts of townships in the direction from South to North shall have been surveyed, the geographer shall transmit plats thereof to the board of treasury, who shall record the same with the report in well bound books to be kept for that purpose: And the geographer shall make similar returns from time to time of every seven ranges as they may be surveyed. The secretary at war shall have recourse thereto, and shall take by lot therefrom a number of townships & fractional parts of townships as well from those to be sold entire as from those to be sold in lots as

will be equal to one seventh part of the whole of such seven ranges as nearly as may be, for the use of the late continental army; and he shall make a similar draught from time to time until a sufficient quantity is drawn to satisfy the same, to be applied in manner hereinafter directed. The board of treasury shall from time to time cause the remaining numbers, as well those to be sold entire as those to be sold in lots, to be drawn for in the name of the thirteen states respectively according to the quotas in the last preceding requisition on all the states; provided that in case more land than its proportion is allotted for sale in any state at any distribution, a deduction be made therefor at the next

The board of treasury shall transmit a copy of the original plats previously noting thereon the townships & fractional parts of townships, which shall have fallen to the several states by the distribution aforesaid to the commissioners of the loan office of the several states, who after giving notice of not less than two nor more than six months by causing advertisements to be posted up at the court houses or other noted places in every county and to be inserted in one newspaper published in the states of their residence respectively shall proceed to sell the townships or fractional parts of townships at public vendue, in the following manner, viz. The township or fractional part of a township N 1. in the first range shall be sold entire, and N 2 in the same range by lots, and thus in alternate order through the whole of the first range. The township or fractional part of a township N 1. in the second range shall be sold by lots, and N 2 in the same range entire, and so in alternate order through the whole of the second range; and the third range shall be sold in the same manner as the first and the fourth in the same manner as the second and thus alternately throughout all the ranges; provided that none of the lands within the said territory be sold under the price of one dollar the acre to be paid in specie or loan office certificates reduced to specie value by the scale of depreciation or certificates of liquidated debts of the United States including interest, besides the expense of the survey and other charges thereon, which are hereby rated at thirty six dollars the township in specie or certificates as aforesaid and so in the same proportion for a fractional part of a township or of a lot, to be paid at the time of sales, on failure of which payment the said lands shall again be offered for sale.

There shall be reserved for the United States out of every township the four lots being numbered, 8, 11, 26, 29 and out of every fractional part of a township so many lots of the same numbers as shall be found thereon for future sale: There shall be reserved the lot N 16 of every township for the maintenance of public schools within the said township; also one third part of all gold, silver, lead and copper mines, to be sold or otherwise disposed of as Congress shall hereafter direct.

When any township or fractional part of a township shall have been sold as aforesaid and the money or certificates received therefor, the loan officer shall deliver a deed in the following terms.

The United States of America to all to whom these presents shall come greeting.

Know ye, that for the consideration of — dollars we have granted and hereby do grant & confirm unto — the township (or fractional part of the township, as the case may be) numbered — in the range —, excepting therefrom and reserving one third part of all gold, silver lead and copper mines within the same and the lots N 8, 11, 26 & 29 for future sale or disposition, and the lot N 16 for the maintenance of public schools. To have to the said — his heirs and assigns for ever (or if more than one purchaser to the said — their heirs and assigns forever as tenants in Common). In witness whereof (A B) Commissioner of the loan office in the state of — hath, in conformity to the Ordinance passed by the United States in Congress assembled the twentieth day of May in the year of our Lord one thousand seven hundred and eighty five, hereunto set his hand and affixed his seal this — day of — in the year of our Lord — and of the independence of the United States of America —

And when any township or fractional part of a township shall be sold by lots as aforesaid, the commissioner of the loan office shall deliver a deed therefor in the following form

The United States of America to all to whom these presents shall come greeting.

Know ye That for the consideration of — dollars we have granted and hereby do grant & confirm unto — the lot (or lots as the case may be) in the township (or fractional part of the township as the case may be) numbered — in the range — excepting and reserving one third part of all gold, silver, lead and copper mines within the same for future sale or dis-

position. To have to the said — his heirs and assigns for ever (or if more than one purchaser, to the said — their heirs and assigns for ever as tenants in common). In witness whereof (A B) commissioner of the continental loan office in the state of — hath, in conformity to the ordinance passed by the United States in Congress assembled the twentieth day of May in the year of our Lord 1785, hereunto set his hand and affixed his seal this — day of — in the year of our Lord — and of the independence of the United States of America —

Which deeds shall be recorded in proper books by the commissioner of the loan office and shall be certified to have been recorded previous to their being delivered to the purchaser, and shall be good and valid to convey the lands in the same described.

The commissioners of the loan offices respectively shall transmit to the board of treasury every three months an account of the townships, fractional parts of townships and lots committed to their charge specifying therein the names of the persons to whom sold and the sums of money or certificates received for the same, and shall cause all certificates by them received to be struck through with a circular punch, and they shall be duly charged in the books of the treasury with the amount of the monies or certificates distinguishing the same by them received as aforesaid.

If any township or fractional part of a township or lot remains unsold for eighteen months, after the plat shall have been received by the commissioners of the loan office, the same shall be returned to the board of treasury and shall be sold in such manner as Congress may hereafter direct

And whereas Congress by their resolutions of September 16 and 18 in the year 1776 and the 12<sup>th</sup> of August 1780 stipulated grants of land to certain officers and soldiers of the late continental army and by the resolution of the 22<sup>d</sup> September 1780, stipulated grants of land to certain officers in the hospital department of the late continental army, for complying therefore with such engagements Be it ordained that the secretary at war, from the returns in his office or such other sufficient evidence as the nature of the case may admit, determine who are the objects of the above resolutions and engagements and the quantity of land to which such persons or their representatives are respectively entitled and cause the townships or

fractional parts of townships herein before reserved for the use of the late continental army to be drawn for in such manner as he shall deem expedient to answer the purpose of an impartial distribution. He shall from time to time transmit certificates to the commissioners of the loan offices of the different states to the lines of which the military claimants have respectively belonged, specifying the name & rank of the party, the terms of his engagement and time of his service and the division, brigade regiment or company to which he belonged, the quantity of land he is entitled to and the township or fractional part of a township and range out of which his portion is to be taken

The Commissioners of the loan offices shall execute deeds for such undivided proportions in manner & form herein before mentioned varying only in such a degree as to make the same conformable to the certificate from the secretary at war.

Where any military claimants of bounty in lands shall not have belonged to the line of any particular state, similar certificates shall be sent to the board of treasury who shall execute deeds to the parties for the same.

The secretary at war, from the proper returns, shall transmit to the board of treasury a certificate specifying the name and rank of the several claimants of the hospital department of the late continental army together with the quantity of land each claimant is entitled to and the township or fractional part of a township and range out of which his portion is to be taken. And thereupon the board of treasury shall proceed to execute deeds to such claimants.

The board of treasury and the commissioners of the loan offices in the states shall within eighteen months return receipts to the secretary at war for all deeds which have been delivered, as also all the original deeds which remain in their hands for want of applicants, having been first recorded, which deeds so returned shall be preserved in the office until the parties or their representatives require the same.

And be it further ordained that three townships adjacent to lake Erie be reserved to be hereafter disposed of by Congress for the use of the officers men & others refugees from Canada and the refugees from Nova Scotia who are or may be entitled to grants of land under resolutions of Congress now existing or which may hereafter be made respecting them and for such other purposes as Congress may hereafter direct.

And be it further ordained that the towns of Gnadenhutzen, Schoenbrun and Salem on the Muskingum and so much of the lands adjoining to the said towns with the buildings and improvements thereon shall be reserved for the sole use of the Christian Indians who were formerly settled there or the remains of that society, as may in the judgment of the Geographer be sufficient for them to cultivate.

Saving and reserving always to all officers and soldiers entitled to lands on the north west side of the Ohio by donation or bounty from the commonwealth of Virginia and to all persons claiming under them all rights to which they are so entitled under the deed of cession executed by the delegates for the state of Virginia on the first day of March 1784 and the act of Congress accepting the same; and to the end that the said rights may be fully and effectually secured according to the true intent and meaning of the said deed of cession and act aforesaid Be it Ordained that no part of the land included between the rivers called little Miami and Sciota on the north-west side of the river Ohio be sold or in any manner alienated until there shall first have been laid off and appropriated for the said Officers and soldiers and persons claiming under them, the lands they are entitled to agreeably to the said deed of cession and act of Congress accepting the same.

Done so [by] the United States in Congress assembled, the 20th day of May, in the year of our Lord 1785, and of our sovereignty and independence the ninth.

CHARLES THOMSON, *Secretary*.

RICHARD H. LEE, *President*.

*Manuscript Journals of Congress.*



## 9 — 1786, March 24. Monroe's Report on New States.

Report of G<sup>d</sup> Com<sup>ee</sup>  
on Motion of M<sup>r</sup> Monroe  
respectg Western territory  
Ent<sup>d</sup> read 24 March 1786  
To be considered Thursday  
March 30<sup>th</sup>  
read.

The Grand Committee to whom were referred a Motion of M<sup>r</sup> Monroe upon the subject of the Western Territory ceded by individual States beg leave to Report in part

That the United States in Congress Assembled having on the 6<sup>th</sup> day of September 1780 Resolved That it be recommended to the several States having claims to waste and unappropriated lands to make liberal surrenders thereof to the United States for their common benefit; and on the 10<sup>th</sup> of October following, that the Territory thus ceded shall be formed into distinct Republican States and admitted members of the federal Union having the Same rights of Sovereignty, freedom and Independence as the other States; and that each State which shall be so formed shall contain a suitable extent of Territory not less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit. And the States of Virginia and Massachusetts having made Cessions accordingly, the latter founded on, & the former with an express compact, among others, as to the said Condition; and the United States fully to carry the said Condition into effect, entered into on the 23<sup>d</sup> of April 1784 several Resolutions Respecting it.

And whereas upon further consideration of the same, it hath appeared that a strict adherence to said Condition in the division of the Country as aforesaid, will produce many inconveniences to the settlers upon the same, and likewise to the Confederacy, to prevent which and put it in the power of the said States to enable the United States to make such division thereof as shall be expedient, it was by the Resolution of — Recommended to the said States to revise their acts of Cession as aforesaid; and as the Resolutions aforesaid of the

23<sup>d</sup> of April 1784 might therefore restrain the United States in case the Said recommendation should be complied with, from taking such measures as might be for the general interest it is hereby

Resolved That the Resolutions of the 23<sup>d</sup> of april 1784 in the words following Viz: "That so much of the Territory ceded or to be ceded by individual states to the United States as is already purchased or shall be purchased of the Indian Inhabitants, and offered for sale by Congress, shall be divided into distinct States in the following manner, as nearly as such Cessions will admit; that is to say by parallels of latitude, so that each State shall comprehend from North to South two degrees of latitude beginning to count from the completion of forty five degrees North of the equator; and by meridians of longitude, one of which shall pass through the lowest point of the Rapids of Ohio, and the other through the western Cape of the mouth of the great Kanhaway: but the Territory eastward of this last Meridian, between the Ohio, lake Erie and Pensylvania, shall be one State whatsoever may be its comprehension of Latitude. That which may lie beyond the Completion of the 45th degree between the said Meridians shall make part of the State adjoining it on the South; and that part of the Ohio, which is between the same Meridians coinciding nearly with the parallel of 39° shall be substituted so far in lieu of that [parallel as a boundary line]" And "That the preceding articles shall be formed into a charter of Compact; shall be duly executed by the President of the United States in Congress Assembled under his hand and the seal of the United States; shall be promulgated; and shall stand as fundamental Constitutions between the thirteen original States and each of the several States now newly described, unalterable from and after the Sale of any part of the Territory of such State, pursuant to this Resolve, but by the joint consent of the United States in Congress Assembled, and of the particular State within which such alteration is proposed to be made." be and they are hereby Repealed.

*Papers of old Congress (Ms. in State Department).*

10 — 1787, May 10. Monroe's Draft  
Territorial Ordinance.

temporary Government  
transcribed agreeably to  
order May 9<sup>th</sup> 1787 &  
assigned for Thursday May 10<sup>th</sup>  
May 10<sup>th</sup> postponed —  
July 9 1787  
Referred &c  
M<sup>r</sup> Carrington  
M<sup>r</sup> Dane  
M<sup>r</sup> Lee  
M<sup>r</sup> Kean  
M<sup>r</sup> Smith

An Ordinance for the temporary government of the Western Territory of  
the U.S. NW. of the River Ohio.

It is hereby ordained by the United States in Congress assembled, that there shall be appointed from time to time, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress.

There shall be appointed by Congress, from time to time, a secretary, whose commission shall continue in force for four years, unless sooner revoked by Congress. It shall be his duty to keep and preserve the acts and laws passed by the general assembly, and public records and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months, to the secretary of Congress.

There shall also be appointed a court, to consist of three judges, any two of whom shall form a court, who shall have a common law jurisdiction, whose commissions shall continue in force during good behavior.

And to secure the rights of personal liberty and property to the inhabitants and others, purchasers in the said territory, it is hereby ordained, that the inhabitants thereof shall always be entitled to the benefits of the act of *habeas corpus*, and of the trial by jury.

The governor and judges, or a majority of them shall adopt

and publish in the territory afores<sup>d</sup> such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the inhabitants, and report them to Congress from time to time, which laws shall be in force [in said] territory until the organization of the general assembly, unless disapproved of by Congress; but afterwards the general assembly shall have authority to alter them as they shall think fit: Provided, however, that said assembly shall have no power to create perpetuities.

The governor for the time being shall be commander in chief of the militia, and appoint and commission all officers in the same, below the rank of general officers; all officers of that rank shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

The governor shall, as soon as may be, proceed to lay out the said territory into counties and townships, subject however to such alterations, as may thereafter be made by the legislature, so soon as there shall be 5000 free male inhabitants, of full age, within the said territory upon giving due proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships as aforesaid, to represent them in general assembly; provided that for every 500 free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives amount to 25, after which the number and proportion of representatives shall be regulated by the legislature; provided that no person shall be eligible or qualified to act as a representative unless he shall be a citizen of one of the United States, or have resided within such territory three years, and shall likewise hold in his own right, in fee simple, 200 acres of land within the same; Provided also, that a freehold, or life estate in fifty acres of land

in the said district, if a citizen of any of the United States, and two years residence if a foreigner, in addition, shall be necessary to qualify a man as elector for the said representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative or removal from office, the governor shall issue a writ to the county or township for which he was a member to elect another in his stead, to serve for the residue of the time.

The general assembly shall consist of the governor, a legislative council, to consist of five members, to be appointed by the United States in Congress assembled, to continue in office during pleasure, any three of whom to be a quorum, and a house of representatives, who shall have a legislative authority complete in all cases for the good government of said territory; Provided that no act of the said general assembly shall be construed to affect any lands the property of the United States, and provided further, that the lands of the non-resident proprietors shall in no instance be taxed higher than the lands of residents.

All bills shall originate indifferently either in the council or house of representatives, and having been passed by a majority in both houses, shall be referred to the governor for his assent, after obtaining which, they shall be complete and valid; but no bill or legislative act whatever, shall be valid or of any force without his assent.

The governor shall have power to convene, prorogue and dissolve the general assembly when in his opinion it shall be expedient.

The said inhabitants or settlers shall be subject to pay a part of the federal debts contracted, or to be contracted, and to bear a proportional part of the burthens of the government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states.

The governor, judges, legislative council, secretary and such other officers as Congress shall at any time think proper to appoint in such territory, shall take an oath or affirmation of fidelity and of office; (the governor before the president of Congress, and all other officers before the governor).

## II — 1787, July 13. Northwest Ordinance.

An Ordinance for the government of the territory of the United States  
North west of the River Ohio.

Be it ordained by the United States in Congress Assembled that the said territory for the purposes of temporary government be one district, subject however to be divided into two districts as future circumstances may in the opinion of Congress make it expedient

Be it ordained by the authority aforesaid, that the estates both of resident and non resident proprietors in the said territory dying intestate shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants then in equal parts to the next of kin in equal degree; and among collaterals the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parent's share & there shall in no case be a distinction between kindred of the whole & half blood; saving in all cases to the widow of the intestate her third part of the real estate for life, and one third part of the personal estate: and this law relative to descents and dower shall remain in full force until altered by the legislature of the district. And until the governor & judges shall adopt laws as herein after mentioned estates in the said territory may be devised or bequeathed by wills in writing signed and sealed by him or her in whom the estate may be, being of full age, and attested by three witnesses, and real estates may be conveyed by lease and release or bargain and sale signed, sealed and delivered by the person being of full age in whom the estate may be and attested by two witnesses provided such wills be duly proved and such conveyances be acknowledged or the execution there of duly proved and be recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose and personal property may be transferred by delivery saving however to the french and canadian inhabitants & other settlers of the Kaskaskies, Saint Vincents and the neighbouring villages who have hereto fore professed them-

selves citizens of Virginia, their laws and customs now in force among them relative to the descent & conveyance of property

Be it ordained by the authority aforesaid that there shall be appointed from time to time by Congress a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district and have a freehold estate therein, in one thousand acres of land while in the exercise of his office. There shall be appointed from time to time by Congress a secretary, whose commission shall continue in force for four years, unless sooner revoked: he shall reside in the district and have a freehold estate therein in five hundred acres of land while in the exercise of his office; It shall be his duty to keep and preserve the acts and laws passed by the legislature and the public records of the district and the proceedings of the governor in his executive department, and transmit authentic copies of such acts & proceedings every six months to the Secretary of Congress. There shall also be appointed a court to consist of three judges any two of whom to form a court, who shall have a common law jurisdiction and reside in the district and have each therein a freehold estate in five hundred acres of land while in the exercise of their offices, and their commissions shall continue in force during good behaviour.

The governor, and judges or a majority of them shall adopt and publish in the district such laws of the original states criminal and civil as may be necessary and best suited to the circumstances of the district and report them to Congress from time to time, which law shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being shall be commander in chief of the militia, appoint and commission all officers in the same below the rank of general Officers: All general officers shall be appointed & commissioned by Congress.

Previous to the organization of the general Assembly the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers,

not herein otherwise directed shall during the continuance of this temporary government be appointed by the governor.

For the prevention of crimes and injuries the laws to be adopted or made shall have force in all parts of the district and for the execution of process criminal and civil, the governor shall make proper divisions thereof, and he shall proceed from time to time as circumstances may require to lay out the parts of the District in which the indian titles shall have been extinguished into counties and townships subject however to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants of full age in the district upon giving proof thereof to the governor, they shall receive authority with time and place to elect representatives from their counties or townships to represent them in the general Assembly, provided that for every five hundred free male inhabitants there shall be one representative and so on progressively with the number of free male inhabitants shall the right of representation encrease until the number of representatives shall amount to twenty five after which the number and proportion of representatives shall be regulated by the legislature; provided that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years and in either case shall likewise hold in his own right in fee simple two hundred acres of land within the same; provided also that a freehold in fifty acres of land in the district having been a citizen of one of the states and being resident in the district; or the like freehold and two years residence in the district shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected shall serve for the term of two years and in case of the death of a representative or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead to serve for the residue of the term.

The general Assembly or legislature shall consist of the governor, legislative council and a house of representatives. The legislative council shall consist of five members to continue in Office five years unless sooner removed by Congress, any three of whom to be a quorum and the members of the council shall be nominated and appointed in the following



manner, to wit; As soon as representatives shall be elected, the governor shall appoint a time & place for them to meet together, and when met they shall nominate ten persons residents in the district and each possessed of a freehold in five hundred acres of Land and return their names to Congress; five of whom Congress shall appoint & commission to serve as aforesaid; and whenever a vacancy shall happen in the council by death or removal from office, the house of Representatives shall nominate two persons qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and Commission for the residue of the term; and every five years, four Months at least before the expiration of the time of service of the Members of Council, the said House shall nominate ten Persons qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and Commission to serve as Members of the Council five years, unless sooner removed. And the Governor, legislative Council, and House of Representatives, shall have authority to make laws in all Cases for the good government of the District, not repugnant to the principles and Articles in this Ordinance established and declared. And all bills having passed by a majority in the House, and by a Majority in the Council, shall be referred to the Governor for his assent; but no bill or legislative Act whatever, shall be of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient—

The Governor, Judges, legislative Council, Secretary, and such other Officers as Congress shall appoint in the District, shall take an Oath or Affirmation of fidelity, and of Office, the Governor before the President of Congress, and all other Officers before the Governor. As soon as a legislature shall be formed in the District, the Council and house assembled in one Room, shall have authority by joint ballot to elect a Delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary Government. —

And for extending the fundamental principles of Civil and religious liberty, which form the basis whereon these republics, their laws and Constitutions are erected; to fix and establish those principles as the basis of all laws, Constitutions and Governments, which forever hereafter shall be formed in the said territory; — to provide also for the establishment of States,

and permanent Government therein, and for their admission to a Share in the federal Councils on an equal footing with the original States, at as early periods as may be consistent with the general interest —

It is hereby Ordained and declared by the authority afore-said, That the following Articles shall be considered as Articles of compact between the Original States and the People and States in the said territory, and forever remain unalterable, unless by common consent, *to wit*,

Article the First. No Person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory —

Article the Second. The Inhabitants of the said territory shall always be entitled to the benefits of the writ of Habeas Corpus, and of the trial by Jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all Persons shall be bailable unless for capital offences, where the proof shall be evident, or the presumption great; all fines shall be moderate, and no cruel or unusual punishments shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his Peers, or the law of the land; and should the Public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular Services, full compensation shall be made for the same, — and in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with or affect private Contracts or engagements, bona fide and without fraud previously formed

Article the Third. Religion, Morality and knowledge being necessary to good Government and the happiness of mankind, Schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them —

Article the Fourth. The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the Acts and Ordinances of the United States in Congress Assembled, conformable thereto. The Inhabitants and Settlers in the said territory, shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes, for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the District or Districts or new States, as in the original States, within the time agreed upon by the United States in Congress Assembled. The legislatures of those Districts, or new States, shall never interfere with the primary disposal of the Soil by the United States in Congress Assembled, nor with any regulations Congress may find necessary for securing the title in such Soil to the *bonâ fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non Resident proprietors be taxed higher than Residents. The navigable Waters leading into the Mississippi and St Lawrence, and the carrying places between the same shall be common highways, and forever free, as well to the Inhabitants of the said territory, as to the Citizens of the United States, and those of any other States that may be admitted into the Confederacy, without any tax, impost or duty therefor —

Article the Fifth. There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of Cession and consent to the same, shall become fixed and established as follows, to wit: The Western State in the said territory, shall be bounded by the Mississippi, the Ohio and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents due North to the territorial line between the United States and Canada, and by the said territorial line to the lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line

drawn due North from the mouth of the great Miami to the said territorial line, and by the said territorial line. — The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; provided however, and it is further understood and declared, that the boundaries of these three States, shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the Southerly bend or extreme of lake Michigan: and whenever any of the said States shall have sixty thousand free Inhabitants therein, such State shall be admitted by its Delegates into the Congress of the United States, on an equal footing with the original States, in all respects whatever: and shall be at liberty to form a permanent Constitution and State Government; Provided the Constitution and Government so to be formed, shall be Republican, and in conformity to the principles contained in these Articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free Inhabitants in the State than sixty thousand.

Article the Sixth. There shall be neither Slavery nor involuntary Servitude in the said territory otherwise than in the punishment of Crimes, whereof the Party shall have been duly Convicted: Provided always that any Person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the Person claiming his or her labor or service as aforesaid. —

Be it Ordained by the Authority aforesaid, that the Resolutions of the 23<sup>d</sup> of April 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void. —

Done so.

On passing the above Ordinance the yeas & nays being required by Mr Yates

<i>Massachusetts</i>	Mr Holten	ay	} ay
	Mr Pane	ay	
<i>New York</i>	Mr Smith	ay	} ay
	Mr Haring	ay	
	M Yates	no	

<i>New Jersey</i>	M <sup>r</sup> Clarke	ay	} ay
	M <sup>r</sup> Schurman	ay	
<i>Delaware</i>	M <sup>r</sup> Kearny	ay	} ay
	M <sup>r</sup> Mitchell	ay	
<i>Virginia</i>	M <sup>r</sup> Grayson	ay	} ay
	M <sup>r</sup> R. H. Lee	ay	
	M <sup>r</sup> Carrington	ay	
<i>North Carolina</i>	M <sup>r</sup> Blount	ay	} ay
	M <sup>r</sup> Hawkins	ay	
<i>South Carolina</i>	M <sup>r</sup> Kean	ay	} ay
	M <sup>r</sup> Huger	ay	
<i>Georgia</i>	M <sup>r</sup> Few	ay	} ay
	M <sup>r</sup> Pierce	ay	

So it was resolved in the affirmative. —

*Manuscript Journals of Congress.*

## 12 — 1789, Aug. 7. Confirmatory Act of Congress.

An Act to provide for the government of the territory north-west of the river Ohio.

WHEREAS, in order that the Ordinance of the United States in Congress assembled, for the government of the territory north-west of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present Constitution of the United States;

BE it enacted by the Senate, and House of Representatives of the United States of America, in Congress assembled, That in all cases in which by the said Ordinance, any information is to be given, or communication made by the Governor of the said territory, to the United States in Congress assembled, or to any of their Officers, it shall be the duty of the said Governor to give such information, and to make such communication to the President of the United States, and the President shall nominate, and by, and with the advice and consent of the Senate, shall appoint all Officers which by the said Ordinance were to have been Appointed by the United States in Congress assembled, and all Officers so appointed, shall be commissioned by him, and in all cases where the United States in Congress assembled, might by the said Ordinance, **revoke any Commission**, or remove from any Office, the

President is hereby declared to have the same powers of revocation and removal.

And be it further enacted, That in case of the death, removal, resignation, or necessary absence of the Governor of the said territory, the Secretary thereof shall be, and he is hereby authorised and required to execute all the powers, and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor.

FREDERICK AUGUSTUS MUHLENBERG

*Speaker of the House of Representatives.*

JOHN ADAMS,

*Vice President of the United States, and  
President of the Senate.*

Approved August the Seventh 1789

G. WASHINGTON —

*President of the United States*

*Original Parchment Rolls (Ms. in State Department).*

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# American History Leaflets.

COLONIAL AND CONSTITUTIONAL.

No. 33. — January, 1902.

## JAMES OTIS'S SPEECH ON WRITS OF ASSISTANCE.

1761.

### CONTENTS OF THIS NUMBER.

1. *Extract from Gray's Article in Quincy's Reports.*
2. *John Adams's Notes of Otis's Speech.*
3. *Gridley's Argument for the Writs from Keith's Note-Book.*
4. *Extract from Tudor's Otis describing the Occasion.*
5. *The Speech as printed in Tudor's Otis.*
6. *Tudor's concluding Remarks.*

James Otis's speech on the Writs of Assistance is conveniently regarded as the first in the chain of events which led directly and irresistibly to revolution and independence. It marks the tone of public opinion in Massachusetts in 1761, as Patrick Henry's Speech in the Parson's Cause two years later gives evidence of the condition of public opinion in Virginia in 1763.

Present knowledge of Otis's great speech is derived entirely from minutes of the evidence taken by John Adams — not yet admitted to the bar. The manuscript of these or a copy of it was stolen from Adams's desk and printed in the *Worcester Spy* for April 29, 1773. Minot printed the *Spy* version in his *Massachusetts* (II. 89-99). The account in Tudor's *Life of Otis*, which is here reprinted, is practically the work of Adams — when an old man. Tudor's book was published in 1823; Adams and Tudor were in correspondence on this subject in 1818. This account probably was written between 1818 and 1823. Among the Adams papers are some notes of Otis's Argument. These are printed in Adams's Works (II. 125), in Quincy's *Reports*. (pp. 469-476), and again here. A "Note-book" made by Israel Keith contains a longer version of Gridley's Argument than "Adams's Notes," or the "*Spy* Article." It is here reprinted from Quincy's

*Reports.* As Keith was nine years old in 1761 the minutes could not have been made by him. Possibly they represent an early copy of Adams's original minutes. The portion containing Gridley's Speech is here reprinted from Quincy's *Reports*. The whole subject of Writs of Assistance is there most admirably studied by Horace Gray, Jr., Esq., later Chief Justice of Massachusetts and now Associate Justice of the Supreme Court of the United States. His concluding paragraph is here reproduced.

No apology is needed for reprinting the long extracts from Tudor's *Otis*. The book is a classic in Revolutionary biography. Many of the opinions and assertions made in it have not borne the brunt of modern research. But all in all it is a masterly work. The comparison of Adams's minutes taken at the time and his account of the matter a half a century later gives one an admiration for the tenacity of the venerable statesman's memory, and also an added distrust of "old men's recollections as a source of history."

The best brief account of the various forms of Otis's Speech is that by Dr. S. A. Green in the Massachusetts Historical Society's *Proceedings*, 2d Series, VI. 190. The full titles of Quincy's and Tudor's works are as follows: Josiah Quincy, Jr., *Reports of Cases argued and adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay between 1761 and 1772*, Boston, 1865—the general editorial work was done by Samuel M. Quincy; William Tudor, *The Life of James Otis of Massachusetts*, Boston, 1823. For other references see Channing and Hart, *Guide to the Study of American History*, § 134.

## 1. Extract from Gray's Article in Quincy's Reports.

A careful examination of the subject compels the conclusion that the decision of *Hutchinson* and his associates has been too strongly condemned as illegal: and that there was at least reasonable ground for holding, as matter of mere law, that the British Parliament had power to bind the Colonies; that even a statute contrary to the Constitution could not be declared void by the judicial Courts; that by the English statutes, as practically construed by the Courts in England, Writs of Assistance might be general in form; that the Superior Court of Judicature of the Province had the power of the English Court of Exchequer; and that the Writs of Assistance prayed for, though contrary to the spirit of the English Constitution, could hardly be refused by a Provincial Court, before general warrants had been condemned in England, and before the Revolution had actually begun in America. The remedy adopted by the Colonies was to throw off the yoke of Parliament; to confer on the judiciary the power to declare unconstitutional statutes void; to declare general warrants





unconstitutional in express terms; and thus to put an end here to general Writts of Assistance. — Quincy's *Reports*, 540.

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## 2. John Adams's Report of Otis's Speech.\*

GRIDLEY. — The Constables distraining for Rates. more inconsistent with Eng. Rts. & liberties than Writts of assistance. And Necessity, authorizes both.

*Thatcher.* I have searched, in all the ancient Repertories, of Precedents, in Fitzherberts *Natura Brevium*, and in the Register (Q. w<sup>t</sup> y<sup>e</sup> Reg. is) and have found no such Writt of assistance as this Petition prays. — I have found two Writts of ass. in the Reg. but they are very diffit, from y<sup>e</sup> Writt prayd for. —

In a Book, intituled the Modern Practice of the Court of Exchequer there is indeed one such Writt, and but one.

By y<sup>e</sup> Act of Pal<sup>t</sup>. any other private Person, may as well as a Custom House Officer, take an officer, a Sheriff, or Constable, &c and go into any Shop, Store &c & seize: any Person authorized by such a Writt, under the Seal of the Court of Exchequer, may, not Custom House Officers only. — Strange. — Only a temporary thing.

The most material Question is, whether the Practice of the Exchequer, will warrant this Court in granting the same.

The Act impowers all the officers of y<sup>e</sup> Revenue to enter and

\* This report, which has been once published in 2 John Adams's Works, 521-523, is by the courteous permission of Mr. Charles Francis Adams here reprinted as exactly as possible, with the original paragraphs, spelling, and punctuation, from the MS. notes of John Adams, who was present at the argument, though he was not admitted as a barrister until the 14th of November following. 2 John Adams's Works, 124 and note, 133. 10 *ib.* 245. Rec. 1761, fol. 239. The only other contemporaneous report is an enlargement of this. *Vide infra*, 477, note 39.

The elaborate narrative given more than half a century afterwards by Adams to Tudor, who printed an abstract of it as the argument of Otis in this case, is rather a recollection of the sentiments of the colonists between 1761 and 1766. 10 John Adams's Works, 232-362 and note. Tudor's *Life of Otis*, 68-86. 4 Bancroft's *Hist. U. S.* 417, note. *Ante*, 409, 417. It would seem to have been written by Adams without even referring to his own notes; for it substitutes Rastall's Entries for *Registrum Brevium*; and asserts that no precedent could be found of a writ of assistance to a custom house officer — in direct opposition to all the counsel in the case, as reported by himself in the text. 10 John Adams's Works, 322, 342. He seems also to attribute to Otis his own argument, seven years later, in the case of *The Liberty*, *ante*, 460, 461. 10 John Adams's Works, 348, 349.



seise in the Plantations, as well as in England. 7. & 8 W<sup>m</sup>. 3, C. 22, § 6, gives the same as 13. & 14. of C. gives in England. The Ground of M<sup>r</sup> Gridleys ag<sup>t</sup>. is this, that his Court has the Power of the Court of Exchequer. — But This Court has renounced the Chancery Jurisdiction, w<sup>h</sup> the Exchequer has in Cases where either Party, is y<sup>e</sup> Kings Debtor. — Q. into y<sup>t</sup> Case.

In Eng. all Informations of uncustomed or prohibited Importations, are in y<sup>e</sup> Exchequer. — So y<sup>t</sup> y<sup>e</sup> Custom House officers are the officers of y<sup>t</sup> Court. — under the Eye, and Direction of the Barons

The Writ of Assistance is not returnable. — If such seisure were brot before your Honours, youd often find a wanton Exercise of their Power.

At home, y<sup>e</sup> officers, seise at their Peril, even with Probable Cause. —

*Otis.* This Writ is against the fundamental Principles of Law. — The Priviledge of House. A Man, who is quiet, is as secure in his House, as a Prince in his Castle — notwithstanding all his Debts, & civil processes of any Kind. — But

For flagrant Crimes, and in Cases of great public Necessity, the Priviledge may be incrohd [incroached?] on. — For Felonies an officer may break, upon Proccess, and oath. — i.e. by a Special Warrant to search such an House, sworn to be suspected, and good Grounds of suspicion appearing.

Make oath cor<sup>m</sup> Id. Treas<sup>r</sup>, or Exchequer, in Eng<sup>d</sup> or a Magistrate here, and get a Special Warrant, for y<sup>e</sup> public good, to infringe the Priviledge of House.

Gen<sup>l</sup>. Warrant to search for Felonies. Hawk. Pleas Crown. — every petty officer from the highest to y<sup>e</sup> lowest, and if some of 'em are uncom others are uncomm. Gov<sup>t</sup> Justices used to issue such perpetual Edicts. (Q. with w<sup>t</sup> particular Reference?)

But one Precedent, and y<sup>t</sup> in y<sup>e</sup> Reign of C. 2 when Star Chamber Powers, and all Powers but lawful & useful Powers were pushed to Extremity. —

The authority of this Modern Practice of the Court of Exchequer. — it has an Imprimatur. — But w<sup>t</sup> may not have? — It may be owing to some ignorant Clerke of y<sup>e</sup> Exchequer.

MARCH FIFTEENTH 18.

But all Precedents and this am'g y<sup>e</sup> Rest are under y<sup>e</sup> Con-





trol of y<sup>e</sup> Principles of Law. Ld. Talbot. better to observe the known Principles of Law y<sup>n</sup> any one Precedent, tho in the House of Lords. —

As to Acts of Parliament. an Act against the Constitution is void: an Act against natural Equity is void: and if an Act of Parliament should be made, in the very Words of this Petition, it would be void. The Executive Courts must pass such Acts into disuse — 8. Rep. 118. from Viner. — Reason of y<sup>e</sup> Com Law to control an Act of Parliament. — Iron Manufacture. noble Lord's Proposal, y<sup>t</sup> we should send our Horses to Eng. to be shod. —

If an officer will justify under a Writ he must return it. 12<sup>th</sup>. Mod. 396. — perpetual Writ.

Stat. C. 2. We have all as good Rt to inform as Custom House officers — & every Man may have a general, irreturnable Commission to break Houses. —

By 12. of C. on oath before L<sup>d</sup> Treasurer, Barons of Exchequer, or Chief Magistrate to break with an officer. — 14<sup>th</sup> C. to issue a Warrant requiring sheriffs &c to assist the officers to search for Goods not entrd, or prohibtd; 7 & 8<sup>th</sup> W. & M. gives Officers in Plantations same Powers with officers in England. —

Continuance of Writts and Proccesses, proves no more nor so much as I grant a special Writ of ass. on special oath, for specl Purpose. —

Pew indorsd Warrant to Ware. — Justice Walley searc'd House. Law Prov. Bill in Chancery. — this Court confined their Chancery Power to Rêvenue &c. — Quincy's *Reports*, 469-476.

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### 3. Gridley's Argument for the Writs from Keith's Note-book.

"M<sup>r</sup> *Gridley*. I appear on the behalf of M<sup>r</sup> Cockle and others, who pray 'that as they cannot fully exercise their Offices in such a manner as his Majesty's Service and their Laws in such cases require, unless your Honors who are vested with the power of a Court of Exchequer for this Province will please to grant them Writs of Assistance. They therefore pray that they & their Deputies may be aided in the Execution of their

Offices by Writs of Assistance under the Seal of this Court and in legal form, & according to the Usage of his Majesty's Court of Exchequer in Great Britain.'

"May it please your Honors, it is certain it has been the practice of the Court of Exchequer in England, and of this Court in this Province, to grant Writs of Assistance to Custom House Officers. Such Writs are mentioned in several Acts of Parliament, in several Books of Reports; & in a Book called the Modern Practice of the Court of Exchequer, We have a Precedent, a form of a Writ, called a Writ of Assistance for Custom house Officers, of which the following a few years past to M<sup>r</sup> Paxton under the Seal of this Court, & tested by the late Chief Justice Sewall is a literal Translation." [Here follows the writ printed *ante*, 404.]

"The first Question therefore for your Honors to determine is, whether this practice of the Court of Exchequer in England (which it is certain, has taken place heretofore, how long or short a time soever it continued) is legal or illegal. And the second is, whether the practice of the Exchequer (admitting it to be legal) can warrant this Court in the same practice.

"In answer to the first, I cannot indeed find the Original of this Writ of Assistance. It may be of very antient, to which I am inclined, or it may be of modern date. This however is certain, that the Stat. of the 14<sup>th</sup> Char. 2<sup>nd</sup> has established this Writ almost in the words of the Writ itself. 'And it shall be lawful to & for any person or persons *authorised by Writ of Assistance under the seal of his Majesty's Court of Exchequer* to take a Constable, Headborough, or other public Officer, inhabiting near unto the place, & in the day time to enter & go into any house, Shop, Cellar, Warehouse, room, or any other place, and in case of Resistance, to break open doors, Chests, Trunks & other Package, & there to seize any kind of Goods or Merchandize whatever prohibited, and to put the same into his Majesty's Warehouse in the Port where Seizure is made.'

"By this act & that of 12 Char. 2<sup>nd</sup> all the powers in the Writ of Assistance mentioned are given, & it is expressly said, the persons shall be authorised by Writs of Assistance under the seal of the Exchequer. Now the Books in which we should expect to find these Writs, & all that relates to them are Books of Precedents, & Reports in the Exchequer, which are

extremely scarce in this Country; we have one, & but one that treats of Exchequer matters, and that is called the 'Modern practice of the Court of Exchequer,' & in this Book we find one Writ of Assistance, translated above. Books of Reports have commonly the Sanction of all the Judges, but books of Precedents never have more than that of the Chief Justice. Now this Book has the Imprimatur of Wright, who was Chief Justice of the King's Bench, and it was wrote by Brown, whom I esteem the best Collector of Precedents; I have Two Volumes of them by him, which I esteem the best except Rastall & Coke. But we have a further proof of the legality of these Writs, & of the settled practice at home of allowing them; because by the Stat. 6<sup>th</sup> Anne which continues all Processes & Writs after the Demise of the Crown, *Writs of Assistance are continued among the Rest.*

"It being clear therefore that the Court of Exchequer at home has a power by Law of granting these Writs, I think there can be but little doubt, whether this Court as a Court of Exchequer for this Province has this power. By the Statute of the 7<sup>th</sup> & 8<sup>th</sup> W. 3<sup>d</sup>, it is enacted 'that all the Officers for collecting and managing his Majesty's Revenue, and inspecting the Plantation Trade in any of the said Plantations, shall have the same powers &c. as are provided for the Officers of the Revenue in England; also to enter Houses, or Warehouses, to search for and seize any such Goods, & that the *like Assistance* shall be given to the said Officers as is the Custom in England."

"Now what is the Assistance which the Officers of the Revenue are to have here, which is like that they have in England? Writs of Assistance under the Seal of his Majesty's Court of Exchequer at home will not run here. They must therefore be under the Seal of this Court. For by the law of this Province 2 W. 3<sup>d</sup> Ch. 3 'there shall be a Superior Court &c. over the whole Province &c. who shall have cognizance of 'all pleas &c. & generally of all other matters, as fully & '[amply] to all intents & purposes as the Courts of King's Bench, Common Pleas & *Exchequer* within his Majesty's Kingdom of England have or ought to have.'

"It is true the common privileges of Englishmen are taken away in this Case, but even their privileges are not so in cases of Crime and fine. 'Tis the necessity of the Case and the benefit of the Revenue that justifies this Writ. Is not the

Revenue the sole support of Fleets & Armies abroad, & Ministers at home? without which the Nation could neither be preserved from the Invasions of her foes, nor the Tumults of her own Subjects. Is not this I say infinitely more important, than the imprisonment of Thieves, or even Murderers? yet in these Cases 'tis agreed Houses may be broken open.

"In fine the power now under consideration is the same with that given by the Law of this Province to Treasurers towards Collectors & to them towards the subject. A Collector may when he pleases distrain my goods and Chattels, and in want of them arrest my person, and throw me instantly into Gaol. What! shall my property be wrested from me!—shall my Liberty be destroyed by a Collector, for a debt, unadjudged, without the common Indulgence and Lenity of the Law? So it is established, and the necessity of having public taxes effectually and speedily collected is of infinitely greater moment to the whole, than the Liberty of any Individual."—*Quincy's Reports*, 479-481.

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#### 4. Tudor's Description of the Occasion—Chapter V.

Immediately after the conquest of Canada was completed, rumors were widely circulated, that a different system would be pursued, that the charters would be taken away, and the colonies reduced to royal governments. The offices [officers] of the customs began at once to enforce with strictness, all the acts of parliament regulating the trade of the colonies, several of which had been suspended, or become obsolete, and thus had never been executed at all. The good will of the colonists or their legislatures, was no longer wanted in the prosecution of the war; and the commissioners of the customs were permitted and directed to enforce the obnoxious acts. Governor Bernard, who was always a supporter of the royal prerogative, entered fully into these views, and shewed by his opinion, his appointments and his confidential advisers, that his object would be, to extend the power of the government to any limits, which the ministry might authorize.

The first demonstration of the new course intended to be pursued, was the arrival of an order in Council to carry into effect the Acts of trade, and to apply to the supreme judicature

of the Province, for *Writs of Assistance*, to be granted to the officers of the customs. In a case of this importance there can be no doubt, that Mr. Paxton, who was at the head of the customs in Boston, consulted with the Government and all the crown officers, as to the best course to be taken. The result was, that he directed his deputy at Salem, Mr. Cockle, in November 1760, to petition the Superior Court, then sitting in that town, for "writs of assistance." Stephen Sewall who was the Chief Justice, expressed great doubt of the legality of such a writ, and of the authority of the Court to grant it. None of the other judges said a word in favour of it; but as the application was on the part of the Crown, it could not be dismissed without a hearing, which after consultation was fixed for the next term of the Court, to be held in February, 1761, at Boston, when the question was ordered to be argued. In the interval, Chief Justice Sewall died, and Lieutenant Governor Hutchinson was made his successor, thereby uniting in his person, the office of Lieutenant Governor with the emoluments of the commander of the castle, a member of the Council, Judge of Probate and Chief Justice of the Supreme Court! This appointment was unexpected and alarming to all reflecting minds, because it was evident that this important place could not have been given to a man who already held so many offices, some of which were quite incompatible with the place of Chief Justice, unless seconding the designs of government in all cases, was to be the excuse and the return for such extraordinary favours.

There were some circumstances of a personal kind connected with this appointment, that formed the ground work for very malicious and absurd misrepresentation. It was generally believed, that the place of Chief Justice, whenever it should become vacant, had been promised by Governor Shirley to James Otis's father, and that revenge for the disappointment was the cause of all his subsequent opposition. The language that was imputed to him by common report on this occasion, and which has been transmitted down, was according to one version, "that he would set the province in flames, though he perished in the fire" or according to another, in part of a well known line, *Acheronta movebo*: though neither of these speeches was ever authenticated. That Otis should have perceived, as clearly as any man, the impropriety and the danger



of giving so many incongruous offices to one individual; that he would readily infer that the nomination could not have been made except from sinister views; that he should have felt disgust and indignation at the rapacity which could seek for such a monopoly of offices; that his quick and generous feelings should be roused at what he might consider an injury to a parent, is natural; but that his public career should have been forever guided by this transient emotion, is preposterous and impossible. It supposes a degree of dishonesty inconsistent with the powerful talents, which even his bitterest enemies acknowledged. If he had not been governed by principle, and taken the side which duty dictated, he was acting a part in sheer folly; for his talents, which led all the measures of opposition for a series of years, would have been retained on the opposite side at any price, and if his purpose had been only to revenge his father's cause, the certain mode of doing so, would have been to take part with the government. The motives of human conduct are seldom unmixed, and even the best men may, through the infirmities of nature, have some alloy with their noblest intentions. But there is no surer mark of a base and envious mind, than the belief, that narrow, sordid views, can be the exclusive means of giving to eminent men a lasting impulse in the career of public life.\*

The mercantile part of the community was in a state of great anxiety, as to the result of this question. The officers of the Customs called upon Otis for his official assistance, as Advocate General, to argue their cause. But, as he believed these writs to be illegal and tyrannical, he refused. He would not prostitute his office to the support of an oppressive act; and with true delicacy and dignity, being unwilling to retain a station, in which he might be expected or called upon to argue in support of such odious measures, he resigned it, though the

\* In writing upon this topic, Mr. Adams remarks: "It is provoking, and it is astonishing, and it is humiliating, to see how calumny sticks and is transmitted from age to age. Mr. — is one of the last men that I should have expected to have swallowed that execrable lie, that Otis had no patriotism. The father was refused an office worth 1200 *l.* old tenor, or about 120 *l.* Sterling, and the refusal was no loss, for his practice at the bar was worth much more; for Colonel Otis was a lawyer in profitable practice, and his seat in the legislature gave him more power and more honour; for this refusal, the son resigned an office which he held from the Crown, worth twice that sum. The son must have been a most dutiful and affectionate child to the father; or rather most enthusiastically and frenzically affectionate."

situation was very lucrative, and if filled by an incumbent with a compliant spirit, led to the highest favours of government.

The merchants of Salem and Boston, applied to Mr. Pratt to undertake their cause, who was also solicited to engage on the other side; but he declined taking any part, being about to leave Boston for New York, of which province he had been appointed Chief Justice. They also applied to Otis and Thacher, who engaged to make their defence, and probably both of them without fees, though very great ones were offered. The language of Otis was, "in such a cause, I despise all fees."

Mr. Thacher, the colleague of Mr. Otis in this great cause, was at that time one of the heads of the bar in Boston, was a fine scholar, and possessed of much general learning. He received his degree at Cambridge in 1738; he first studied divinity, and began to follow a profession which had been that of his ancestors for several generations, but his voice being too weak for the pulpit, he gave it up to study law. His family was one of the most respectable in the Province, and his own character and manners were such, as to secure affection and esteem. Unassuming and affable in his deportment, of strict morality, punctual in his religious duties, and with sectarian attachments that made him, like a large majority of the people, look with jealousy and enmity on the meditated encroachments of the English hierarchy, he was in all these respects fitted to be popular. To these qualities he joined the most pure and ardent patriotism, and a quick preception [perception] of the views of those in power. He had been for a long time watchful of Hutchinson's ambition, but when he heard of his taking the place of Chief Justice, he no longer restrained his feelings, but on all occasions spoke of him with the contempt and indignation, that his selfishness and sinister conduct deserved. The opposition of Thacher gave the government great uneasiness: his disposition and habits secured public confidence, and while his moderation preserved him from the imputation of ambition, his learning and ability gave weight to his opinions, and prevented him from being considered as under the influence of others. Such a man might be esteemed an impartial umpire between the government and the people, and his example had naturally great weight with them. There was no pretext for assigning any unworthy motive for the part he took; and he was therefore the more to be dreaded. Mr.

Adams says, "they hated him worse than they did James Otis or Samuel Adams, and they feared him more, because they had no revenge for a father's disappointment of a seat on the Superior bench to impute to him, as they did to Otis."

He published some essays on the subject of an alteration proposed by Hutchinson relative to the value of gold and silver; in which controversy, as will be noticed hereafter, Otis took part on the same side. Thacher also wrote a pamphlet against the policy of the Navigation Act, and the Acts of Trade. This pamphlet is entitled "The Sentiments of a British American" printed in 1764. It is temperate, though earnest, and well written, the hardship and impolicy of these measures is very ably illustrated—His motto is a fable of Phœdrus, of which the close is a key to his sentiments—

Ergo quid refert mea  
Cui serviam? elitellas dum portem meas.

He died of a pulmonary complaint, aggravated by his excessive anxiety respecting public affairs in 1765, after having been two years in the legislature from the town of Boston.\*

The trial took place in the Council Chamber of the Old Town House, in Boston. This room was situated at the east end of that building, and like all the interior parts, has since undergone various alterations. At that time it was an imposing and elegant apartment, ornamented with two splendid full length portraits of Charles II. and James II. The Judges, in those days, in conformity to European practice, attached a part of their official dignity to a peculiar costume, which in later times they have here discarded. Their dress was composed of voluminous wigs, broad bands, and robes of scarlet

\* "Not long before his death," says President Adams, "he sent for me, to commit to my care some of his business at the bar. I asked him whether he had seen the Virginia resolves: "Oh yes—they are men! they are noble spirits! It kills me, to think of the lethargy and stupidity that prevails here, I long to be out. I will go out—I will go out—I will go into Court and make a speech, which shall be read after my death, as my dying testimony against this infernal tyranny, which they are bringing upon us." Seeing the violent agitation into which it threw him, I changed the subject as soon as possible, and retired. He had been confined for some time. Had he been abroad among the people, he could not have complained so pathetically of the "lethargy and stupidity," for town and country were all alive; and in August, became active enough, and some of the people proceeded to unwarrantable excesses, which were more lamented by the patriots, than by their enemies. Mr. Thacher soon died, deeply lamented by all the friends of their country."

cloth. The judges were five in number, including Lieutenant Governor Hutchinson, who presided as Chief Justice. The room was filled with all the officers of government, and the principal citizens, to hear the arguments in a cause, that inspired the deepest solicitude.

The case was opened by Mr. Gridley, who argued it with much learning, ingenuity and dignity, urging every point and authority, that could be found after the most diligent search, in favour of the Custom house petition; making all his reasoning depend on this consideration — "if the parliament of Great Britain is the sovereign legislator of the British Empire." \* He was followed by Mr. Thacher on the opposite side, whose reasoning was ingenious and able, delivered in a tone of great mildness and moderation. "But," in the language of President Adams, "Otis was a flame of fire; with a promptitude of classical allusions, a depth of research, a rapid summary of historical events and dates, a profusion of legal authorities, a prophetic glance of his eyes into futurity, and a rapid torrent of impetuous eloquence, he hurried away all before him. American Independence was then and there born. The seeds of patriots and heroes, to defend the *Non sine Diis animosus infans*; to defend the vigorous youth, were then and there sown. Every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against Writs of Assistance. Then and there, was the first scene of the first act of opposition, to the arbitrary claims of Great Britain. Then and there, the child Independence was born. In fifteen years, i.e. in 1776, he grew up to manhood and declared himself free."

"There were no stenographers in those days," to give a complete report of this momentous harangue. How gladly

\* This summary account of Mr. Gridley's argument is from President Adams's letters. In Minot's *History*, Vol. 2, p. 87. A short statement of his argument is given, which tends to shew that this writ was founded on statutes of the 12th and 14th of Charles II.; and the authority of the Supreme Court in this Province to grant it, was to be derived from the statute of the 7th and 8th of William III., which gave officers of the revenue in this country the same powers as officers in England — And that in the execution of their duty they should receive the *like assistance*. The obvious meaning of this seems to be, that an officer in case of necessity should have a right to call for the same support from those about him in pursuance of his duty. It seems a most st(r)ained and preposterous inference, to make the general term, *like assistance*, mean a special and odious process called a *writ of assistance*, invented in the worst times of the Stuart tyranny.

would be exchanged for it, a few hundred verbose speeches on some of the miserable, transient topics of the day, that are circulated in worthless profusion. Yet on this occasion, "the seeds were sown," and though some of them doubtless fell by the wayside or on stony places, others fell on good ground, and sprang up and increased and brought forth in due season, thirty, sixty and an hundred fold. Of the vigour of some of the soil that received this seed, the preceding quotation is a living and most eloquent proof. It indeed affords some compensation for the absence of contemporary records, and the subsequent neglect of this great leading transaction, that one of the hearers, after the lapse of sixty years, with all the authority which venerable age and illustrious services can confer; should have called the attention of his countrymen to the subject; and by a rare and felicitous force of memory, carrying back their regards over the course of two generations, have exhibited with a magical effect through the obscurity of time, an impressive and brilliant sketch, of one of the first struggles that led to their national existence.

## 5. Otis's Speech as printed in Tudor's "Otis"— Chapter VI.

Anxiety and expectation were raised to the utmost in the minds of all parties, to hear the argument of Otis, which he began in the following manner.\*

"MAY IT PLEASE YOUR HONOURS,

"I was desired by one of the Court to look into the books, and consider the question now before them concerning the Writs of Assistance. I have accordingly considered it, and now appear not only in obedience to your order, but likewise in behalf of the inhabitants of this town, who have presented another petition, and out of regard to the liberties of the subject. And I take this opportunity to declare, that whether under a fee or not, (for in such a cause as this I despise a fee,) I will to my dying day oppose with all the powers and faculties God has given me, all such instruments of slavery

\* The fragments of this speech are taken from Minot's *History*, Vol. 2. It seems from the letters of President Adams, that they were derived from some imperfect notes, taken by him at the time, which were afterwards carried off by some individual, who "interpolated them, with some bombastic expressions of his own," and printed them in a newspaper.

on the one hand, and villany on the other, as this writ of assistance is.

"It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book. I must therefore beg your honours' patience and attention to the whole range of an argument, that may perhaps appear uncommon in many things, as well as to points of learning that are more remote and unusual: that the whole tendency of my design may the more easily be perceived, the conclusions better descend, and the force of them be better felt. I shall not think much of my pains in this cause, as I engaged in it from principle. I was solicited to argue this cause as Advocate General; and because I would not, I have been charged with desertion from my office. To this charge I can give a very sufficient answer. I renounced that office, and I argue this cause from the same principle; and I argue it with the greater pleasure, as it is in favour of British liberty, at a time when we hear the greatest monarch upon earth declaring from his throne, that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown; and it is in opposition to a kind of power, the exercise of which in former periods of English history, cost one King of England his head, and another his throne. I have taken more pains in this cause, than I ever will take again, although my engaging in this and another popular cause has raised much resentment. But I think I can sincerely declare, that I cheerfully submit myself to every odious name for conscience sake: and from my soul I despise all those, whose guilt, malice, or folly has made them my foes. Let the consequences be what they will, I am determined to proceed. The only principles of public conduct, that are worthy of a gentleman or a man, are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country.

"These manly sentiments, in private life, make the good citizen; in public life, the patriot and the hero. I do not say, that when brought to the test, I shall be invincible. I pray God I may never be brought to the melancholy trial, but if ever I should, it will be then known how far I can reduce to practice, principles, which I know to be founded in

truth. In the mean time I will proceed to the subject of this writ."

It appears that some of these writs had been issued, though by what authority is not stated; and the officers of the revenue were afraid to make use of them, unless they could obtain the sanction of the superior court, which had led to the application. It is impossible to devise a more outrageous and unlimited instrument of tyranny, than this proposed writ: \* and it cannot be wondered at, that such an alarm should have been created, when it is considered to what enormous abuses such a process might have led. The following paragraph from the report of Otis' speech before quoted, will serve to shew what kind of instrument was here prayed for, and some results that might have been expected from it.

"Your Honours will find in the old books concerning the office of a Justice of the Peace, precedents of general warrants to search suspected houses. But in more modern books, you will find only special warrants to search such and such houses, specially named, in which the complainant has before sworn that he suspects his goods are concealed; and will find it adjudged, that special warrants only, are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power, that places the liberty of every man in the hands of every petty officer. I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to other acts of Parliament. In the first place, the writ is universal, being directed 'to all and singular Justices, Sheriffs, Constables, and all other officers and subjects;' so that, in short, it is directed to every subject in the King's dominions. Every one with this writ may be a tyrant in a legal manner, also may control, imprison, or murder any one within the realm. In the next place, it is perpetual, there is no return. A man is accountable to no person for his doings. Every man

\* "The form of this writ, was no where to be found; in no statute, no law book, no volume of entries; neither in Rastall, Coke, or Fitzherbert, nor even in the Instructor Clericalis, or Burns Justice. Where then was it to be found? No where, but in the imagination or invention, of Boston Custom House Officers, Royal Governors, West India Planters, or Naval Commanders." — President Adams's Letters.

may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the archangel shall excite different emotions in his soul. In the third place, a person with this writ, in the day time, may enter all houses, shops, &c. at will, and command all to assist him. Fourthly, by this writ, not only deputies, &c. but even their menial servants, are allowed to lord it over us. What is this but to have the curse of Canaan with a witness on us; to be the servant of servants, the most despicable of God's creation? Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and every thing in their way: and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and when Mr. Ware succeeded him, he endorsed this writ over to Mr. Ware: so that, these writs are negotiable from one officer to another; and so your Honours have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of the sabbath-day acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, Yes. Well then, said Mr. Ware, I will shew you a little of my power. I command you to permit me to search your house for uncustomed goods: and went on to search the house from the garret to the cellar; and then served the constable in the same manner! But to shew another absurdity in this writ, if it should be established, I insist upon it every person by the 14th Charles second, has this power as well as the Custom-House officers. The words are, "it shall be lawful for any person or persons authorized, &c." "What a scene does this open! Every man prompted by revenge, ill humour, or wantonness to inspect the inside of his neighbour's house, may get a writ of assist-



ance. Others will ask it from self-defence; one arbitrary exertion will provoke another, until society be involved in tumult and in blood."

His argument in this cause lasted between four and five hours, and the summary of it can be best, and can now be only given, in the words of President Adams, who divides it into five parts as follows: 1. "He began with an exordium, containing an apology for his resignation of the office of advocate general in the court of admiralty; and for his appearance in that cause in opposition to the crown, and in favour of the town of Boston, and the merchants of Boston and Salem.

2. "A dissertation on the rights of man in a state of nature. He asserted, that every man, merely natural, was an independent sovereign, subject to no law, but the law written on his heart, and revealed to him by his Maker, in the constitution of his nature, and the inspiration of his understanding and his conscience. His right to his life, his liberty, no created being could rightfully contest. Nor was his right to his property less incontestible. The club that he had snapped from a tree, for a staff or for defence, was his own. His bow and arrow were his own; if by a pebble he had killed a partridge or a squirrel, it was his own. No creature, man or beast, had a right to take it from him. If he had taken an eel, or a smelt, or a sculpin, it was his property. In short, he sported upon this topic with as much wit and humour, and at the same time with so much indisputable truth and reason, that he was not less entertaining than instructive. He asserted, that these rights were inherent and inalienable. That they never could be surrendered or alienated, but by ideots or madmen, and all the acts of ideots [idiots] and lunatics were void, and not obligatory, by all the laws of God and man. Nor were the poor negroes forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson of Virginia, ever asserted the rights of negroes in stronger terms. Young as I was, and ignorant as I was, I shuddered at the doctrine he taught; and I have all my life shuddered, and still shudder, at the consequences that may be drawn from such premises. Shall we say, that the rights of masters and servants clash, and can be decided only by force. I adore the ideal of gradual abolitions! but who shall decide how fast or how slowly these abolitions shall be made?

3. "From individual independence he proceeded to association. If it was inconsistent with the dignity of human nature to say, that men were gregarious animals, like wild geese, it surely could offend no delicacy to say, they were social animals by nature; that there were natural sympathies, and above all, the sweet attraction of the sexes, which must soon draw them together in little groups, and by degrees in larger congregations, for mutual assistance and defence. And this must have happened before any formal covenant, by express words or signs, was concluded. When general councils and deliberations commenced, the objects could be no other than the mutual defence and security of every individual for his life, his liberty, and his property. To suppose them to have surrendered these in any other way, than by equal rules and general consent, was to suppose them ideots [idiots] or madmen, whose acts were never binding. To suppose them surprised by fraud, or compelled by force into any other compact, such fraud and such force could confer no obligation. Every man had a right to trample it under foot whenever he pleased. In short, he asserted these rights to be derived only from nature, and the author of nature; that they were inherent, inalienable, and indefeasible by any laws, pacts, contracts, covenants, or stipulations, which man could devise.

4. "These principles and these rights were wrought into the English constitution, as fundamental laws. And under this head he went back to the old Saxon laws, and to Magna Charta, and the fifty confirmations of it in parliament, and the executions ordained against the violators of it, and the national vengeance which had been taken on them from time to time, down to the Jameses and Charleses; and to the petition of rights and the bill of rights, and the revolution. He asserted, that the security of these rights to life, liberty and property, had been the object of all those struggles against arbitrary power, temporal and spiritual, civil and political, military and ecclesiastical, in every age. He asserted, that our ancestors, as British subjects, and we, their descendants, as British subjects, were entitled to all those rights, by the British constitution, as well as by the law of nature, and our provincial charter, as much as any inhabitant of London or Bristol, or any part of England; and were not to be cheated out of them by any phantom of "virtual representation," or any

other fiction of law or politics, or any monkish trick of deceit and hypocrisy.

5. "He then examined the acts of trade, one by one, and demonstrated, that if they were considered as revenue laws, they destroyed all our security of property, liberty, and life, every right of nature, and the English constitution, and the charter of the province. Here he considered the distinction between "external and internal taxes," at that time a popular and common place distinction. But he asserted that there was no such distinction in theory, or upon any principle but "necessity." The necessity that the commerce of the empire should be under one direction, was obvious. The Americans had been so sensible of this necessity, that they had connived at the distinction between external and internal taxes, and had submitted to the acts of trade as regulations of commerce, but never as taxations, or revenue laws. Nor had the British government, till now, ever dared to attempt to enforce them as taxations or revenue laws. They had laid dormant in that character for a century almost. The navigation act he allowed to be binding upon us, because we had consented to it by our own legislature. Here he gave a history of the navigation act of the first of Charles II., a plagiarism from Oliver Cromwell. This act had lain dormant for fifteen years. In 1675, after repeated letters and orders from the King, governor Leverett very candidly informs his majesty, that the law had not been executed, because it was thought unconstitutional; parliament not having authority over us."

Taking a rapid survey of the terrors and vexations the colonists were exposed to under the reign of Charles I. and their tranquillity under the Commonwealth, he came to the first fruits which they tasted of the restoration, to the celebrated Navigation Act; and he dwelt upon this as the first in order, among those acts which were now to be enforced by the Writs of Assistance. The main provisions of this act may be comprised in a very few words; nothing should be imported into any of the English possessions in Asia, Africa or America, excepting in vessels belonging to the people of England, Ireland, Wales or the Town of Berwick upon Tweed, and besides being truly built and owned in said possessions, the master and three fourths of the sailors must be English; and no goods of foreign production should be brought even in English shipping, except from the countries that produced them.

He expatiated on the narrow exclusive spirit of this statute; but he would not deny either its policy or necessity, at the time of its enactment, because England was then surrounded by the power of France, Spain, and Holland; nor would he blame the conduct of Governor Leverett, and the Massachusetts legislature in adopting it in 1675, after it had laid dormant for fifteen years. It was a sacrifice they were obliged to make; but he contended, that the sacrifice was a very great one on the part of the colonies in general, and of New England in particular, and above all to the town of Boston. He thought this statute ought to have been sufficient to satisfy the ambition and cupidity of the mother country, who boasted so much of her indulgence and affection for her colonies.

The navigation act, however, was wholly prohibitory, it abounded with penalties and forfeitures, but it imposed no taxes. The distinction therefore was vastly great between this and the Acts of Trade. Though no revenue was to be derived from this act, still it was intended to be enforced by these Writs, and houses were to be broken open and ransacked under their authority to enforce it. The Writs of Assistance were thus extended in a manner, which had never been contemplated. He discussed most amply, all the effects, which the acts of navigation produced upon the colonies.

There are, it may be here observed, few statutes enacted by any nation, that have been more important, or excited more discussion, than the English navigation act. While the restrictive and monopolizing system was thought to be sound political wisdom, this act as forming an essential part of it, might be considered a masterpiece of policy; but in proportion, as wiser notions of national policy make their way into the councils of all civilized countries, and gradually eradicate the false and narrow principles of less enlightened periods, this act, which has been often relaxed in its operation, will probably so far as foreign trade is concerned, give way to the extension of liberal views in commerce; which all free and industrious nations find every day to be more and more productive of advantage to themselves, as well as to the world at large. Commerce is now gradually enlarging the prosperity and the rights of mankind; and wise statesmen begin to believe more fully, that the general prosperity increases individual advantage; and that nations gain not by depressing,

but by a free intercourse with each other. This act did not meet with universal approbation at first, and in the language of Sir Josiah Child "some wise and honest gentlemen and merchants doubted, whether the inconveniences it has brought with it, be not greater than the conveniences." It is a curious circumstance, that this act which has been cherished with so much bigotry in England, and which inflicted so much injury and oppression on the Colonies, and especially on Massachusetts, should have originated from one of her own progeny, for such was its author, Sir George Downing, of whom President Adams speaks in the following manner.

"But it is high time for me to return from this ramble to Mr. Otis' quotations from Sir Josiah Child, whose chapter four, page 105, is 'concerning the act of navigation.' Probably this knight was one of the most active and able inflamers of the national pride in their navy and their commerce, and one of the principal promoters of that enthusiasm for the act of navigation, which has prevailed to this day. For this work was written about the year 1677, near the period, when the court of Charles II. began to urge and insist on the strict execution of the act of navigation. Such pride in that statute, did not become Charles, his court, or his nation of royalists and loyalists, at that time. For shall I blush, or shall I boast, when I remember, that this act was not the invention of a Briton, but of an American. George Downing, a native of New England, educated at Harvard College, whose name, office, and title appear in their catalogue, went to England in the time of lord Clarendon's civil wars, and became such a favourite of Cromwell and the ruling powers, that he was sent ambassador to Holland. He was not only not received, but ill treated, which he resented on his return to England, by proposing an act of navigation, which was adopted, and has ruined Holland, and would have ruined America, if she had not resisted.

"To borrow the language of the great Dr. Johnson, this 'Dog' Downing must have had a head and brains, or in other words, genius and address: but if we may believe history, he was a scoundrel. To ingratiate himself with Charles II. he probably not only pleaded his merit in inventing the navigation act, but he betrayed to the block some of his old republican and revolutionary friends.

"But where is Downing's statute? British policy has suppressed all the laws of England, from 1648 to 1660. The statute book contains not one line. Such are records and such is history."

From the navigation act the advocate passed to the Acts of Trade, and these, he contended, imposed taxes, enormous, burthensome, intolerable taxes; and on this topic he gave full scope to his talent for powerful declamation and invective, against *the tyranny of taxation without representation*. From the energy with which he urged this position, that taxation without representation is tyranny, it came to be a common maxim in the mouth of every one. And with him it formed the basis of all his speeches and political writings; he builds all his opposition to arbitrary measures from this foundation, and perpetually recurs to it through his whole career, as the great constitutional theme of liberty, and as the fundamental principle of all opposition to arbitrary power.

The first of these acts of trade on which he commented was the 15th of Charles II. ch. 7. in 1663, entitled "An act for the encouragement of trade" one short section from this act may be given as a type of them all, shewing in the most undisguised manner, the remorseless spirit of colonial monopoly. "Sec. 5. And in regard his majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of England, for the maintaining a greater correspondence and kindness between them, and keeping them yet more beneficial and advantageous unto it, in the further employment and increase of English shipping and seamen, vent of English woollen and other manufactures and commodities, rendering the navigation to and from the same, more cheap and safe, and making this kingdom a staple, not only of the commodities of these plantations, but also of the commodities of other countries and places, for the supplying of them; and it being the usage of other nations to keep their plantations' trade to themselves." — The statute then goes on to enact that nothing shall be imported or exported from the Colonies, except from or to "England, Wales, or the Town of Berwick upon Tweed." It may be imagined from the ardent character of the speaker, what must have been the tone of his observations on these ordinances. Mr. Adams says, that "some of them appeared to me at the time, young as I was, bitter."

The main question constantly recurred, where is the authority for the writs of assistance? After all the search that had been made by all the members of the bar who had been employed on either side, the only instance where the words could be found, was in a statute of the 13th and 14th of Charles the second, which was cited by Mr. Gridley, and which Otis denied to be either authority or precedent, or to have the least colour of either, in America. The statute was entitled, "An act to prevent frauds, and regulating abuses in his majesty's customs"; and in the fifth section, which had reference to prohibited or uncustomed goods being found on board of vessels after clearance, or in any place on shore, it is provided for the seizure of those goods, that, "it shall be lawful to or for, any person or persons, authorized by *writ of assistance under the seal of his majesty's Court of Exchequer*, to take a constable, headborough, or other public officer, inhabiting near unto the place, and in the day time to enter, and go into any house, shop, cellar, warehouse, or room, or other place; and in case of resistance, to break open doors, chests, trunks, and other package, there to seize and from thence bring, any kind of goods or merchandize whatsoever prohibited and uncustomed, and to put and secure the same, in his majesty's storehouse in the port next to the place where such seizure shall be made." Another act was cited in connection with this, that was passed in the seventh and eighth of William the third, chap. 23d. "to regulate the plantation trade."—This statute expressly recited the act before mentioned of Charles II. which it went to inforce, and that "like assistance" should be given to the officers as in the act of Charles—the word *assistance* here occurs for the second, and last time, in any statute.

But in the former of these acts, and in the latter, if the construction can be allowed to authorize a writ of assistance, these writs were to be issued under the seal of the Court of Exchequer, and were returnable to it. Otis, after alluding to both these acts, asked with triumphant confidence, "where is your seal of his majesty's Court of Exchequer, and, what has the Court of Exchequer to do here?" They had no warrant from the Exchequer in England, and could not assume to have any. It could not be pretended that the Superior Court of Judicature, court of assize and general goal [gaol] delivery in the Massachusetts Bay, had all the powers of the Court of

exchequer in England and could issue warrants like that Court. No custom house officer dared say it, or instruct his counsel to say it. This Court, it is true, was invested with all the power of the Court of King's bench, common pleas and exchequer in England; but this power was given by a law of the provincial legislature, by virtue of the powers vested in it by the charter. Yet neither Hutchinson nor the other judges, dared say that this Court was his majesty's court of exchequer, because the principle would have been fatal to parliamentary pretensions.

Otis went still further than to deny the jurisdiction of the court of exchequer; its warrants and writs were never seen here, or if they were, would be only waste paper. Such a "writ of assistance" he said, might become the reign of Charles the second of England, and he would not dispute the taste of the parliament of England in passing such an act, nor the people of England in submitting to it; but it was not calculated for the meridian of this country. He insisted further, that these warrants and writs were even in England inconsistent with the fundamental laws, the natural and constitutional rights of the subjects. If, however, it would please the people of England, he might admit that they were legal there, but not here.

The case of the petitioners was attempted to be made out, by a series of inferences and forced constructions of the most sophistical kind; whenever they could find the word "writ" or "continued" or "assistance" or the words "court of exchequer," they produced the statute, though it might be in express terms, "restricted to the realm." There were several acts of this kind passed under the Stuart kings, which were brought forward. Among these were, "an act for the regulation of the trade of Bay making, in the Dutch Hall in Colchester"—and an "act for the regulating the making of Kidderminster stuffs." There seems to have been no other reason for citing these statutes than their having contained permission "to enter, search, break open houses, shops, cellars, rooms, casks, boxes," &c. &c. and to seize and carry away "certain obnoxious articles." These odious and violent enactments, which have at all times perhaps, been too readily passed in England, were yet limited to some particular manufacture, which they were designed to encourage. Many of



them were brought from different reigns, in which the rights of the subject were treated with little ceremony, in favour of establishing particular manufactures, and of destroying foreign rivalship, yet all these acts were confined to the realm, and their operation to very narrow limits within it. "The wit, the humour, the irony, the satire played off, by Mr. Otis, in his observations on these acts of navigation, Dutch Bays, and Kidderminster stuffs," "it would be madness in me," says Mr. Adams, "to pretend to remember with any accuracy. But I do say, that Horace's *Irritat, mulcet, veris terroribus implet*, was never exemplified in my hearing with so great effect." All the statutes were noticed from Charles II. to George III. inclusive, that the crown officers thought could be made to bear on the question. In the examination of these statutes, and especially of those called the acts of trade, he illustrated their spirit and tendency, by many references to Child, Gee, Ashley, and Davenant, whose works on Trade, and the Colonies, were a commentary on these acts. He shewed by many sound and striking observations, how unjust, oppressive, and impracticable they were; that they never had been and never could be executed; and asserted what must have then been considered rather extravagant, though it was doubtless true, "that if the King of Great Britain in person were encamped on Boston Common, at the head of twenty thousand men, with all his navy on our coast, he would not be able to execute these laws. They would be resisted or eluded." When he came to the consideration, of "an act for the better security and encouraging the trade of his Majesty's sugar Colonies in America," passed the 6th year of George II. which imposed a very heavy duty on foreign sugar and molasses, and which statute contains the following language; "we, your Majesty's most dutiful and loyal subjects, the Commons of Great Britain, assembled in parliament, have *given and granted* unto your Majesty, the several and respective duties hereinafter mentioned," he laid down maxims which thenceforward became current enough. He demonstrated the importance of these two articles of molasses and sugar, the former of which, especially, was connected inseparably with the fisheries, with almost all the commerce of the colony, as well as its manufactures and agriculture, and he observed by calculation the great amount of revenue that would be raised by it. He further advanced

principles, that must have been heard by his audience with very strong, but very different emotions, when "he asserted this act to be a revenue law, a taxation law, made by a foreign legislature, without our consent, and by a legislature who had no feeling for us, and whose interest prompted them to tax us to the quick."

The last ground taken by him in commenting on these later acts of trade, was their incompatibility with the charter of the Colony. He went over the history of the charters. "Neither the first James nor Charles could be supposed to intend, that Parliament, which they both hated more than they did the Pope or the French king, should share with them in the government of colonies instituted by their royal prerogative." "Tom, Dick and Harry were not to censure them in their council." Pym, Hampden, Sir Harry Vane and Cromwell, did not surely wish to subject a country, which they sought as an asylum, to the arbitrary jurisdiction of a country, from which they wished to fly. Charles the second had learned by dismal, doleful experience, that parliaments were not to be wholly despised. He therefore endeavoured to associate parliament with himself, in his navigation act, and many others of his despotic projects, even in that of destroying by his unlimited licentiousness and debauchery, the moral character of the nation. In pointing out the violent infringement of the charters, from Dummer's defence of the New England charters, he bestowed many just praises on that excellent work.

In thus adverting to the history of the charters and the colony, he fell naturally on the merit of its founders, in undertaking so perilous, arduous, and almost desperate an enterprise; in "disforesting bare creation"; in conciliating and necessarily contending with Indian natives, in purchasing, rather than conquering, a quarter of the globe [globe] at their own expense, the sweat of their own brows, at the hazard and sacrifice of their own lives; without the smallest aid, assistance or comfort from the government of England, or from England itself as a nation. On the contrary, meeting with constant jealousy, envy, intrigue against their charter, their religion, and all their privileges. He reproached the nation, parliament, and king with injustice, illiberality, ingratitude, and oppression in their conduct towards this country, in a style of oratory that I never heard equalled in this or any other country.

After the close of his argument, the Court adjourned for consideration, and at the close of the term, Chief Justice Hutchinson pronounced the opinion: "The Court has considered the subject of writs of assistance, and can see no foundation for such a writ; but as the practise in England is not known, it has been thought best to continue the question to the next term, that in the mean time opportunity may be given to know the result." \* No cause in the annals of colonial jurisprudence had hitherto excited more public interest; and none had given rise to such powerful arguments. When the profound learning of the advocate, the powers of wit, fancy and pathos, with which he could copiously illustrate and adorn that learning, and the ardent character of his eloquence, are considered; and that the disposition to serve his clients, whose cause he had undertaken to defend gratuitously, was not probably lessened by the instant conviction that his family had, with a view to this very cause, been injured by the appointment of the presiding judge, and that his belief in the importance of the subject must have been certainly enforced by all the personal sacrifices he had made on this occasion, together with the obloquy and ill will of the people in power which would follow his course; and, above all, a deep foresight of the meditated oppression and tyranny that would be gratified by the success of this hateful application — when all these circumstances are recalled, the power and magnificence of this oration may be imagined. With a knowledge of the topics that were involved, and the fearless energy with which they were developed and elucidated, the time when it occurred, and the accompanying circumstances; every person will join with President Adams when he says: "I do say in the most solemn manner, that Mr. Otis' oration against writs of assistance, breathed into this nation the breath of life."

\* When the next term came, Mr. Adams says, "No judgment was pronounced, nothing was said about writs of assistance. But it was generally reported and understood that the Court clandestinely granted them, and the custom house officers had them in their pockets, though I never knew that they dared to produce and execute them in any one instance." Minot's history says, "The writ of assistance was granted," and refers to the court records for authority: yet this was probably a mere form to save the pride of the administration; and as nothing was afterwards heard of this odious instrument, President Adams's opinion is unquestionably correct, "that they never dared to execute them."

## 6. Tudor's concluding Remarks—Chapter VII.

In addition to the deep anxiety, which such a question as that of "Writs of Assistance," involving so extensively, not only pecuniary concerns, but political and civil rights, must inevitably have created; this trial was also accompanied with a peculiar interest, arising out of incidental circumstances of a personal nature, some of which have been already mentioned. There were others very striking. Otis was the pupil of Gridley, for whose character he felt a high respect, and for whose instruction he was sincerely grateful: and he never lost sight of these feelings in the course of the trial. "It was," says, the venerable witness so often quoted, "a moral spectacle more affecting to me than any I have ever since seen upon the stage, to observe a pupil treating his master with all the deference, respect, esteem and affection of a son to a father, and that without the least affectation; while he baffled and confounded all his authorities, confuted all his arguments, and reduced him to silence!" Nor was a suitable return wanting on the part of the master. The same observer in another place remarks; "The crown, by its agents, accumulated construction upon construction, and inference upon inference, as the giants heaped Pelion upon Ossa. I hope it is not impious or profane to compare Otis to Ovid's Jupiter; but, *misso fulmine fregit Olympum, et excussit subjecto Pelio Ossam*. He dashed this whole building to pieces, and scattered the pulverized atoms to the four winds; and no judge, lawyer, or crown officer dared to say, why do ye so?"

"In plain English, by cool, patient comparison of the phraseology of these statutes, their several provisions, the dates of their enactments, the privileges of our charters, the merits of the Colonists, &c. he shewed the pretensions to introduce the revenue acts, and these arbitrary and mechanical Writs of Assistance, as an instrument for the execution of them, to be so irrational; by his wit he represented the attempt as so ludicrous and ridiculous; and by his dignified reprobation of an impudent attempt to impose on the people of America, he raised such a storm of indignation, that even Hutchinson, who had been appointed on purpose to sanction this writ, dared not utter a word in its favour, and Mr. Gridley himself seemed to me to exult inwardly at the glory and triumph of his pupil."

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